

Leave of Absence

Tuesday, March 04, 2008

SENATE

Tuesday, March 04, 2008

The Senate met at 1.30 p.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Mr. President: Hon. Senators, I have granted leave of absence to Sen. The Hon. Martin Joseph and Sen. The Hon. Tina Gronlund-Nunez, who are out of the country.

SENATORS' APPOINTMENT

Mr. President: Hon. Senators, I have received the following correspondence from His Excellency the President, Prof. George Maxwell Richards:

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Professor GEORGE MAXWELL RICHARDS, T.C., C.M.T., Ph.D., President and Commander-in-Chief of the Republic of Trinidad and Tobago.

/s/ G. Richards
President.

TO: MR. FOSTER CUMMINGS

WHEREAS Senator Martin Joseph is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, FOSTER CUMMINGS, to be temporarily a member of the Senate, with effect from 4th March, 2008 and continuing during the absence from Trinidad and Tobago of Senator Martin Joseph.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 3rd day of March, 2008.”

Senators' Appointment
[MR. PRESIDENT]

Tuesday, March 04, 2008

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Professor GEORGE MAXWELL RICHARDS, T.C., C.M.T., Ph.D., President and Commander-in-Chief of the Republic of Trinidad and Tobago.

/s/ G. Richards
President.

TO: MR. NOEL GAYLE

WHEREAS Senator Tina Gronlund-Nunez is incapable of performing her duties as a Senator by reason of her absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, NOEL GAYLE, to be temporarily a member of the Senate, with immediate effect and continuing during the absence from Trinidad and Tobago of Senator Tina Gronlund-Nunez.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 4th day of March, 2008.”

OATH OF ALLEGIANCE

Senators Foster Cummings and Noel Gayle took and subscribed the Oath of Allegiance as required by law.

IMMIGRATION (ADVANCE PASSENGER INFORMATION) BILL

Bill to make provision for the transmission of advance passenger information respecting persons travelling to Trinidad and Tobago and for related matters, brought from the House of Representatives [*The Minister of National Security*]; read the first time.

PAPERS LAID

1. Annual audited financial statements of Tourism and Industrial Development Company of Trinidad and Tobago for the year ended September 30, 2000. [*The Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne)*]

2. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the Heritage and Stabilisation Fund of the Republic of Trinidad and Tobago for the period ended September 30, 2007. [Sen. *The Hon. M. Browne*]

ORAL ANSWERS TO QUESTIONS

**Licensing Authority
(Computerization of)**

4. **Sen. Wade Mark** asked the hon. Minister of Works and Transport:

Would the Minister inform this Senate when the Licensing Authority will be fully computerized in order to bring relief to the drivers of this country and particularly to protect against any fraudulent activities within the Authority?

The Minister of Works and Transport (Hon. Colm Imbert): Mr. President, I regret to inform this Senate that the answer to this complicated question is not yet ready. However, it is almost in a state of completion and I anticipate that it can pass through all the approval stages within the next two weeks.

I ask for a deferral of two weeks.

Question, by leave, deferred.

Sen. Mark: So sad.

**Trinidad and Tobago Fire Service
(Details of)**

8. **Sen. Wade Mark** asked the hon. Minister of National Security:

Would the Minister inform this Senate:

- (i) Whether the Fire Service of Trinidad and Tobago is sufficiently equipped to combat fires in high rise buildings now being constructed in Port of Spain and environs and San Fernando?
- (ii) If the answer to (i) is in the affirmative, would the hon. Minister inform this Senate of the type of equipment provided to the Fire Service?
- (iii) If the answer to (i) is in the negative, would the hon. Minister state what steps are intended to remedy the situation?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, the substantive Minister of National Security is out of the

country. I am therefore requesting that all questions posed to the Minister be taken on his return at the next sitting.

Question, by leave, deferred.

The following questions stood on the Order Paper:

**V.T. Shipbuilding International
Interim Facility Contract
(Details of)**

19. A. Could the hon. Minister of National Security inform the Senate whether the two interim vessels procured under an interim facility contract with V.T. Shipbuilding International were delivered in October, 2007 as promised by the hon. Prime Minister in his statement to the House of Representatives on April 20, 2007?
- B. If the answer to (A) is in the negative, could the Minister outline the reason or reasons for the delay?
- C. Could the Minister state what is the revised delivery date of these vessels? [*Sen. B. Ali*]

**La Brea Industrial Development Company
(Status of)**

20. A. Could the hon. Minister of National Security inform the Senate as to the status of the ongoing investigations into the La Brea Industrial Development Company (LABIDCO) project?
- B. Could the Minister also inform the Senate what steps are being taken to have this outstanding matter concluded? [*Sen. W. Mark*]

Questions, by leave, deferred.

**Magistrates' Court
(Details of CAT Proceedings)**

10. **Sen. Wade Mark** asked the hon. Attorney General:

Would the Attorney General inform this Senate when she expects to have full computer aided transcription of court proceedings in the Magistrates' Court in Trinidad and Tobago?

The Attorney General (Sen. The Hon. Bridgid Annisette-George): Mr. President, I too, regret that even though this information has been sought from the

Judiciary, it is not yet available. I continue to endeavour to get the information to answer in a timely order.

Sen. Mark: Could the hon. Attorney General tell the Senate when you will be in a position to answer this question?

Sen. The Hon. B. Annisette-George: Mr. President, I have tried my best to get this information from the Judiciary. Several requests have been made and efforts are continuing to answer this. As soon as the information becomes available I would answer the question.

Question, by leave, deferred.

Mr. Douglas Mendes SC
(Details of Retention of Services)

12. Sen. Wade Mark asked the hon. Attorney General:

Could the Attorney General provide the Senate with:

- A. A detailed list of the matters in which Mr. Douglas Mendes SC has been retained by:
 - (i) the Government of Trinidad and Tobago;
 - (ii) the Integrity Commission;
 - (iii) the National Lotteries Control Board;
 - (iv) the Telecommunications Authority of Trinidad and Tobago; and
 - (v) any other state enterprise and/or statutory authority during the period January 01, 2002 and December 31, 2007?
- B. Could the Attorney General also provide a detailed breakdown of the fees paid to the said Senior Counsel during the same period?

The Attorney General (Sen. The Hon. Bridgid Annisette-George): Mr. President, the answer to this question is not yet available. It covers an extensive period of time and a number of bodies that are not under the control of the Attorney General, so that there is difficulty in arriving at all the information. I endeavour to source the information to answer the question.

Question, by leave, deferred.

**Two Fast Ferries
(Purchase of)**

22. Sen. Wade Mark asked the hon. Minister of Works and Transport:

- A. With respect to the purchase of the two fast ferries known as the *Trinidad and Tobago Spirit* and the *Trinidad and Tobago Express*, could the Minister inform the Senate:
- (i) what was the cost of each ferry;
 - (ii) from whom were these ferries purchased;
 - (iii) what is the name of the local agents involved; and
 - (iv) what was the percentage and amount of the sale price paid to the agent(s)?

The Minister of Works and Transport (Hon. Colm Imbert): Mr. President, I do have the answer to this question. [*Desk thumping*] The Port Authority of Trinidad and Tobago has advised as follows:

- (i) The *Trinidad and Tobago Express* also known as the *T&T Express* also called *HSC Incat 046* and/or the *Lynx* was purchased for US \$19.975 million in December 2006. This vessel is a 91-metre wave piercing catamaran, commissioned by Incat of Australia in December 1997. It was nine years old at the time of purchase.
- (ii) The *Trinidad and Tobago Spirit* also called the *T&T Spirit* also called *HSC Incat 060* and/or *TSV 1X Spearhead* was purchased for US \$46.5 million in June 2006. This vessel is a 98-metre Evolution 10B wave piercing catamaran, commissioned by Incat of Australia in November 2002. It was three and a half years old at the time of purchase.

It should be noted that the cost of a new fast ferry with similar specifications is now in excess of US \$55 million.

The *T&T Express* was purchased from HSV 046 Residuals Pty Limited of Sydney, New South Wales, Australia.

The *T&T Spirit* was purchased from Incat Bollinger, Hobart, Tasmania.

- (iii) No agents were involved in either purchase transaction, since the vessels were purchased directly from the owners by the Port Authority of Trinidad and Tobago on behalf of the Government of Trinidad and Tobago.

- (iv) In light of the answer to part (iii) above, part (iv) of the question does not apply.

**Two Fast Ferries
(Type of Purchase)**

23. Sen. Wade Mark asked the hon. Minister of Works and Transport:

- A. Could the Minister inform the Senate whether the two fast ferries purchased by the Government were the subject of competitive bidding or were they secured on a sole selective basis?
- B. If the purchase was as a result of competitive bidding, could the Minister provide the Senate with the details of the transaction?
- C. If the transaction was as a result of a sole selective arrangement, could the Minister provide the Senate with the reasons for proceeding along this line?

The Minister of Works and Transport (Hon. Colm Imbert): Mr. President, I also have the answer to this question. Two fast ferries have been purchased by the government of Trinidad and Tobago, namely the *Lynx*, now called the *T&T Express* and the *Incat 060*, now called the *T&T Spirit*. The *T&T Express* is a 91-metre wave piercing catamaran, commissioned by Incat of Australia in December 1997 and the *T&T Spirit* is a 98-metre Evolution 10B wave piercing catamaran, commissioned by Incat of Australia in November 2002. Both of these vessels were acquired on a selective basis.

In the case of the *Lynx*, this vessel was initially on charter to the Government of Trinidad and Tobago on the inter-island route and the charter agreement gave the Government the option to purchase the vessel at any time during the charter by giving a 90-day notice to the owners. This vessel performed well on the route and satisfied all of the technical requirements for use in the government shipping service.

1.45 p.m.

The purchase price of the vessel was fixed in the charter agreement at US \$19.975 million and, considering its age of nine years at the time of purchase and its general condition, this price was found to be reasonable in the context of prevailing world market conditions for similar ferries. As a consequence, the Government exercised the purchase option for this vessel in July 2006. The purchase was completed in December 2006.

With respect to the other ferry, in the case of *Incat 060*, tenders for the acquisition of high speed passenger/cargo roll-on/roll-off ferry were initially invited in November 2005. Two of the vessels offered in this tender exercise were found to be suitable for use on the inter-island route: one from Incat Tasmania and the other from Bay Ferries. However, the Port Authority of Trinidad and Tobago was subsequently informed that the Incat vessel was sold and the other vessel from Bay Ferries was no longer available. As a result, the tendering process was terminated.

Subsequently, Incat Tasmania, through its associated company, Incat Bollinger, brought to the attention of the Port Authority of Trinidad and Tobago another fast ferry, *Incat 060*, a 98-metre Evolution 10B wave piercing catamaran. This vessel was delivered as a new ship in November 2002 to the US Military on a three-year lease arrangement and became available in late 2005 after it was returned to the builder's yard in Tasmania. When *Incat 060* became available, being aware of the world shortage of suitable fast passenger ferries and the fact that a newbuild vessel would take at least two years to complete and would cost in the vicinity of US \$55 million, the Port Authority of Trinidad and Tobago seized the opportunity to pursue the acquisition of this vessel. The price of the vessel was US \$46.5 million, which was considered reasonable, bearing in mind its age, just over three years, at the time of purchase and the prevailing world market conditions of similar ferries.

As a result, a team was dispatched to Tasmania to inspect the vessel in order to establish its condition, the feasibility and time frame for undertaking the necessary conversion works and the terms and conditions of sale. The vessel was found to be in very good condition and satisfied the technical requirements of the government's shipping service, with the exception of its accommodation since it was outfitted as a military vessel with a number of individual cabins rather than an open plan layout which is required for the inter-island route. It was therefore necessary to have the vessel converted from a military to a passenger vessel and repainted before it could be commissioned for use on the inter-island route. These modifications were all subsequently completed at the shipyard in Tasmania and delivered to the port authority in Tasmania in June 2006.

Sen. Mark: Is it normal practice on the part of the Government to purchase boats in the manner the Minister has described? Could the Minister indicate who were the members of the team that visited Australia to inspect the boat?

Hon. C. Imbert: I see that we are in the practice of multiple supplementals. The answer to the first question is yes; and the answer to the second question is: I

do not have detailed knowledge, but I do know that persons from the government shipping service and marine experts comprised the team. I do not have their names, but I am aware that it was a team of experts who went to Tasmania to inspect the vessel.

Sen. Mark: Since it is a normal practice to do what the Port Authority of Trinidad and Tobago has done, can you provide the Senate with instances of a similar kind of approach by your Government as they relate to this transaction?

Hon. C. Imbert: Mr. President, selective tendering is commonplace in the state sector.

Sen. Mark: I would like the hon. Minister to indicate whether it is normal practice for the Government to simply and whimsically proceed to purchase—

Mr. President: Sen. Mark, I think the question was asked and answered and the adverbs are not necessary. I do not think it should be put.

Sen. Dr. Nanan: Mr. President, the Minister in his answer said that the cost of the ferry was \$46.5 million and it had to be outfitted for this particular route. Was there an additional cost to the Government of Trinidad and Tobago?

Hon. C. Imbert: No.

WRITTEN ANSWER TO QUESTION

Trinidad and Tobago Police Service (Vehicles Purchased)

32. Sen. Prof. Ramesh Deosaran asked the hon. Minister of National Security:

With respect to the responsiveness and mobility of police officers in the Trinidad and Tobago Police Service, would the Minister inform this Senate:

- (i) what is the total number of vehicles, motorcycles and bicycles purchased by the Government and given to the Trinidad and Tobago Police Service for each of the years, 2002, 2003, 2004, 2005, 2006, 2007;
- (ii) what is the total cost for the various items in each year of purchase;
- (iii) how many usable vehicles, motorcycles and bicycles are now available for the Trinidad and Tobago Police Service; and
- (iv) how are they distributed among the various units, departments and divisions of the Trinidad and Tobago Police Service?

Vide end of sitting for written answer.

Sen. Mark: Mr. President, let me point out to you that there are several questions in the Appendix that remain outstanding. I know that you have indicated that you cannot cajole the Government to answer questions, but I will ask the Leader of Government Business directly to exercise some influence on his colleagues so that the written answers that are due so long can become a reality at the next sitting.

Sen. Enill: Mr. President, with respect to the written replies, No. 1 was recommended by PQC to Cabinet on March 07. That would be approved. No. 21 was referred to the Cabinet; No. 24 was deferred by PQC for an amendment; No. 33 required an amendment; No. 35 will go to Cabinet on March 07; No. 36 was deferred by PQC for an amendment; No. 37, an amendment; No. 38 and No. 39 were recommended by PQC for Cabinet approval. So these questions are under active consideration and will be here very shortly.

LEGAL PROFESSION (AMDT.) BILL

[Second Day]

Order read for resuming adjourned debate on question [February 19, 2008]:

That the Bill be now read a second time.

Question again proposed.

Mr. President: Hon. Senators, debate on the following Bill, which was in progress when the Senate adjourned on Tuesday, February 19, 2008 will be resumed.

Following is a list of persons who spoke: Sen. The Hon. Bridgid Annisette-George, who laid the Bill, Sen. Wade Mark, Sen. The Hon. Jerry Narace, Sen. Mohammed Faizal Rahman, Sen. Prof. Ramesh Deosaran and Sen. Dr. Carson Charles, who spoke for 14 minutes and has a balance of 31 minutes, if he so wishes.

Sen. Dr. Charles: Mr. President, I will not continue with my contribution on that matter.

Sen. Helen Drayton: Mr. President, the proposed amendment to section 15 of the Legal Profession Act is to allow Trinidad and Tobago to conform to its treaty obligations under the revised treaty establishing the Caribbean Single Market and Economy (CSME). The text used in the amendment is the official text of the treaty. In an overview of the CSME, the free movement of persons as envisioned is specifically linked to economic activity and includes free movement of skills, labour and the facilitation of travel.

For the CSME to be implemented, it is necessary that the member states modify their national laws, policies and programmes to accommodate the decisions that were made at the regional level and of which Trinidad and Tobago is a member.

With respect to the modification of the national law, in the treaty for the Caribbean Community, under: “Chapter V: Establishment, Services and Movement of Capital, Article 35, section 6 states the following:

“For the purposes of this Article and Articles 36 and 38 of this Annex:

- (a) a person shall be regarded as a national of a member state if such person:
 - (i) is a citizen of that State;
 - (ii) has a connection with that State of a kind which entitles him to be regarded as belonging to, or, if it be so expressed, as being a native or resident of the State for the purposes of such laws thereof...”

It is therefore rightfully deductive to state that this amendment to the Legal Profession Act, as worded, simply conforms to what has already been accepted by Trinidad and Tobago in the treaty.

In doing a little research, according to the United Nations Conference on Trade and Development (UNCTAD), the series of conferences on investment agreements in the United Nations in New York and Geneva in 1999, this section of the treaty was actually discussed and it was thought that, as is, it certainly allowed far more leeway than other treaties in agreement with the same intent.

Article 3.1 of the treaty establishing the CARICOM agreement on the harmonization of fiscal incentives to the industry defines “national” to mean a person who is a citizen of any member state and includes a person—this is where in the previous debate it was mentioned that the word “connection” with such a state is fairly loose and not quite clear as to the intent. What do we mean in terms of the categories of persons who would qualify under this amendment?

What is important is that the proposed amendment is subject to the Immigration Act and having studied the Act, Chap. 18:01, section 5(1), it makes allowances for the following:

“The following persons, not being citizens of Trinidad and Tobago, are residents of Trinidad and Tobago:

- (a) a person who was entitled under the former Constitution to be registered as a citizen;

- (b) a person to whom permission has been granted by the Minister under section 6 to become a resident;
- (c) a person other than the person described in paragraph (a) or (b) who immediately before the commencement of the Immigration Act (that is, 1st July, 1976) was deemed to be a person belonging to Trinidad and Tobago by virtue of section 2(2) of the former Ordinance;
- (d) a person who applies for and is granted permission to become a resident under section 50(1);
- (e) the child of a person who is a citizen of Trinidad and Tobago who by virtue of this section is a resident provided that such child is a minor or is dependent on and living with his parents;
- (f) such other persons on whom the Minister may confer the status of a resident.”

So what we have here is that resident status is clearly statutorily defined in the Immigration Act.

It is preferable that the amendment be clear, that is, notwithstanding the fact that it is the language of the treaty and what is proposed is consistent with the content of the treaty. It is preferable, if it was defined in this context, that a Caricom national means a person who is a citizen of a Caricom member state, which is already stated in the first amendment, or is domiciled, resident or a native of that member state as recognized under immigration laws.

2.00 p.m.

This would make the amendment fairly consistent with the treaty, as well as consistent with our immigration laws, in that “citizen,” as I have said, has a clear meaning in statute. “Domiciled” refers to a legal resident in statute. “Resident” has a clear meaning, as defined in the Immigration Act. Of course, I understand why “native” has been included; which is someone who is born in a Caricom member state but who, perhaps, is no longer living or resident in that state.

In summary, I share the view of what has already been said, that is, it is fairly loose, more so, when you think that there is a another Bill which deals with the advance passengers. I bring this into this discussion because the intent there, certainly, is to prevent the entry of persons who intend to do harm to the security and destabilize the country. We have here a Bill, under the Treaty of the Caribbean Single Market and Economy, with words that are so loose with no specific identification as to what you mean and who are the categories referred to.

Be that as it may, be it the formal text of the treaty, I end by saying that it is preferable if that amendment is clear, with respect to its intent. Thank you.

Mr. President: Do we have any other speakers?

Sen. Dr. Jennifer Kernahan: Thank you, Mr. President. The Legal Profession (Amdt.) Bill, 2008 before us, seeks to amend the Legal Profession Act in section 15. Section 15 states:

“Subject to this Act, a person who makes application to the High Court and satisfies the court that he:

(a) is a Commonwealth citizen...”

It is amended by adding “or a CARICOM national.” In the Bill before us, we have a definition of the amendment of a “Caricom national”.

In clause 2(b), we are amending the Legal Profession Act by inserting after subsection (4) the following subsection (4A).

“In this section, ‘CARICOM national’ means a person who—

(a) is a citizen of a CARICOM Member State; or

(b) has a connection with that State of a kind which entitles the person to be regarded as belonging to or, if it be so expressed, as being a native or resident of the State for the purposes of the law thereof relating to immigration.”

This is even hard to read, far less understand.

The issues before us, based on this proposed amendment to the Legal Profession Act, are fundamental to the discussion here today and they are not new. The system of legal education in the West Indies has come a long way from the days when the primary means of attaining legal training was by articleships to local sitters, at the end of which you would face an examination of the English Law Society and you would read for the English Bar. At that time, there was no mandatory course of legal studies to become an attorney-at-law.

The issues of what should be the fundamentals of legal education and, more important to the Act that we are discussing today, who should be allowed to practise in the West Indies, has been under discussion as early as 1963. This is not a new discussion. In 1963, the Council of the University of the West Indies appointed the Wooding Committee, under the chairmanship of the Right Honourable Sir Hugh Wooding, to:

Legal Profession (Amdt.) Bill
[SEN. DR. KERNAHAN]

Tuesday, March 04, 2008

“consider and make recommendations to the Council on the assistance with the University of the West Indies as part of its service to the West Indian community and in light of its responsibility for satisfying the intellectual and professional needs of the West Indies, should provide for the training in the West Indies of legal practitioners, with a view to ensuring their admission to practise and the right to audience before the courts of the West Indies.”

That was a very clear mandate, in that since 1963, we were concerned with the whole question of a West Indian product in the legal profession; what would be the requirements for a West Indian product licensed to practise before the courts in the West Indies. Therefore, the establishment of the Council of Legal Education was actually a result of the recommendations and the ideals expressed in the Hugh Wooding Committee Report.

Other reviews of the legal education system have been undertaken. There was a Marshall Committee appointed in 1980, to review legal education and make its recommendations. One of the most important reviews was commissioned in 1996, under the chairmanship of Dr. Lloyd Barnett. That committee made important recommendations, many of the recommendations that are in effect today, for legal education and defining the question of who is permitted to practise before the courts of Trinidad and Tobago and by extension, the West Indies. It is interesting that the Barnett Committee—I have the report—*Report of the Review Committee on Legal Education in the Caribbean 1996*—was established precisely because of the concerns over the number of graduates who were seeking admission into the law schools and the limited capacity of the schools to meet this demand. Therefore, the whole question of who would practise was central to the Barnett Committee.

Some of the members of this committee were Sen. Le Roy Inniss and Mrs. Glenda Morean, with the mandate to investigate the systems of cost allocations and quota in order to establish the appropriate criteria for determining the optimum capacity for each law school to accommodate students wishing to undergo training for the Legal Education Certificate.

Even then, the government, the law school and the university felt that these were important issues because there was the whole question of the opening up of education and of people wanting to enter the law school. You had to come to some conclusion, with respect to who would enter and who would be eligible to practise as an attorney-at-law.

The amendment proposed in the Bill before us implies a very wide and ambiguous definition of the persons who would be considered Caricom nationals and, therefore, are entitled to practise as attorneys-at-law in Trinidad and Tobago. The previous speaker, Sen. Drayton, made the point that the amendment is totally ambiguous and very wide. Therefore, even then, the challenge that this amendment poses and the challenge that has always been posed in this context, is the question of entitlement. That question was addressed in the Barnett Report because that report recognized the fact that there were a number of factors that were allowing that plethora of interested persons in studying law.

He mentioned a couple of them, the increase in the number of graduates from our secondary institutions, the question of technological development and the fact that distance learning was a possibility that was being taken up by very bright and motivated students who secured credentials to allow them to study to enter into the legal profession. He mentioned that another aspect of it is that second generation West Indians were coming back home; those who had that ancestry and would have been entitled to, as a West Indian person, qualify to enter into the faculties and later on into the law schools. Dr. Barnett recognized and admitted in his report that the entrance to law school was not so much a question of being bright or brilliant and achieving good grades. He actually said:

“Only a small percentage of the qualified applicants can be admitted and a high percentage of very qualified applicants have had to be refused entry because of the limited space available.”

The question of entitlement and who would be able to practise as an attorney-at-law before the courts of Trinidad and Tobago and in the West Indies, was always a question of space, limitation and structural deficiencies in the system that needed to be addressed.

Since 1996, these issues were raised. They need to be addressed in terms of entitlement and equity for students of Trinidad and Tobago and West Indians, who are bona fide West Indians, entitled to practise before the courts. These have not been resolved or addressed. This is the context in which we are debating this Bill today. We have a definition of “a CARICOM national” but it is very wide and ambiguous. It does not necessarily entail bona fide West Indian. The issues that historically face West Indians who have the ability and qualifications and have not been able to acquire places in the law schools and then later on in the law faculty, these questions have not been addressed. Dr. Barnett has put it this way:

Legal Profession (Amdt.) Bill
[SEN. DR. KERNAHAN]

Tuesday, March 04, 2008

“The demands on the Law Schools and the political pressure on governments have been severe. And all these issues need to be tackled in a comprehensive and decisive way if the Caribbean system is to be preserved in order to secure its intended purposes and to fulfill the aspirations of its architects.”

Our system of legal education has evolved and is evolving. Our academics believe we need to give a definite Caribbean character to this system of legal education and, therefore, the facilities and infrastructure that would allow us to maintain the integrity and essentially Caribbean character of our Caribbean legal profession, is being compromised. That is the issue. If you are going to have an issue whereby the integrity of the Caribbean system in legal education would be compromised by issues which can be fixed, by matters which can be addressed but have not been sufficiently addressed, then it seems to us very cavalier now to introduce a Bill into this Senate that would allow wider levels of entitlement to non-Caribbean and non-West Indian persons to enter our faculties and law schools to practise to become attorneys-at-law and to practise in this country.

As I have said before, it is a question of equity in this amendment before us. The Barnett Report is very clear on these issues. The Barnett Report went on to say:

“We have adverted to the fact that when the West Indian system of legal education was established it was anticipated that the candidates admitted to the Law Schools would predominantly be graduates of the UWI Faculty of Law. The number of applicants to the Faculty normally is ...1,000 per year; but admissions have been limited to ...110. The capacity of the Faculty cannot be efficiently stretched beyond 130 admissions per year.”

2.15 p.m.

Mr. President, this is the issue. The issue is a question of capacity. We have over 1,000 persons applying, and there is no way that more than 130 persons can be admitted to the faculty.

He says that it makes it impossible for a number of very highly qualified students to enter the law faculty and, therefore, there is injustice and inequity inherent here. Mr. President, the Barnett Report also noted that the pressures on the ability of the faculty to accommodate bona fide students were compounded by other developments, some of which I mentioned. He mentioned the extra-mural teaching, because the law faculty wants to be on the cutting edge of educational developments, and extra-mural teaching was introduced. You have the UWIDITE distant teaching facilities which were introduced. There are a number of

institutions springing up in our country that offer courses toward the London LLB degree. He mentioned that there were a number of other institutions worldwide which offer education toward a law degree and, over the years, all these students have approached the faculty, and based on their qualifications and so forth they needed some sort of input into the level of the qualifications.

Mr. President, that is why this very committee made the recommendation which stands today where you have the Faculty of Law School examination that would serve to level the playing field, and everybody would be submitted to this examination, outside of the graduates of UWI, so that they could get a better handle on the levels of qualifications and aptitude of the students who would be applying to the law schools.

This question of applying an examination to weed out persons who would not get into the faculty was a second option to increasing the capacity of the law school to take in students. The committee did make mention of the fact that there was an optimal number that countries would need to look at so as not to overload the profession.

They even looked at the question of the Carl Stone Report that looked at analysing the needs of the different islands with respect to lawyers and so forth, to get a sense of what would be the optimal number of persons that would be necessary to graduate from the law school every year.

Mr. President, there is now the question of globalization and free movement of persons and so forth with developed countries. I believe that the training of lawyers and so forth in the quantities, that maybe our students have the capacity and desire for, might not be such a bad thing, because now you have the possibility of emigrating; the possibility of working in other countries; and the possibility of establishing a base in different areas in this globalized world. That was one of the issues; the question of capacity.

The other issue that the Barnett Report raised that was not addressed—in fact, as recently as 2005, that question was not addressed—is the question of quotas. If you are going to say that you are going to widen the applicability or the eligibility of persons—it is very ambiguous—to practise as attorneys-at-law in this country that have a “connection with that state of a kind which entitles the person to be regarded as belonging to or being a native or resident of the State”, we do not know what that means.

The Barnett Report made the point that clearly this amendment is meant to circumvent the core ideals and values which were fundamental to the original

Legal Profession (Amdt.) Bill
[SEN. DR. KERNAHAN]

Tuesday, March 04, 2008

intent of the Legal Profession Act. I am going to go into that matter at the end of my contribution.

Mr. President, I am making the link with respect to the question of quotas, because this amendment is going to affect quotas. If you are going to have more people coming in, then you are going to have the question of organization or reorganization of quotas from the different islands that are going to be eligible to enter the law faculties and later on the law schools.

The Barnett Report noted:

“By agreement between the participating countries, a quota system was established for determining the distribution of places in the Law Schools among their nationals.”

It went on to say:

“The quotas bear no relationship to the population of each of the participating countries, or the size of the legal profession, or the number of posts existing in the legal...”

Sen. Dr. Saith: Senator, on a point of order. Mr. President, Standing Order 35(1). As far as I am aware, this has nothing to do with persons entering law school. We are subjected to a discourse on the entrants in the law school.

Mr. President: I was thinking the same thing just as you rose, and I was wondering where the Senator is taking this. This is now the second rounds that you have started on, in terms of the ability of the law school to absorb students. The Bill is clearly not about that at all. It is about the legal profession, as apart from the law school. I think the Minister is right and you should try to come back and focus more sharply on the Bill.

Sen. Dr. J. Kernahan: Mr. President, before I started on this point, I clearly made the connection that the amendment before us is very wide and very ambiguous and it clearly circumvents the criteria established in the Legal Profession Act that persons who are allowed to practise as attorneys-at-law should be members of the Commonwealth or Caricom nationals, but being a Caricom national is one thing, but the definition of a “Caricom national” in this amendment is very wide and very ambiguous. Other Senators have made this same observation and, therefore, this is directly related to the number of persons who are going to be entering the Faculty of Law, and the number of persons who are going to be entering the law school to practise as attorneys. There is a direct connection.

If you widen the net and the number of persons who are going to be coming into the system clearly, at the end of the day, you are going to have an imbalance in the system, because you are going to have persons who are not bona fide members being able to practise.

Mr. President: Senator, I do not want to get into a debate with you, but you know very well that each piece of legislation stands on its own. A definition in this Bill for the use of the Legal Profession Act stands on its own, and it is not relevant to any other piece of legislation anywhere else. It is really a stretch to say that because the definition here is being widened it impacts what is happening in the law school. There is really no nexus. I think you should come back to the Bill.

Sen. Dr. J. Kernahan: Mr. President, with respect to the question of other constraints identified by the Barnett Report, it identified that there was a good case in favour of expanding the capacity of our facility for legal education. I think this was the point that was made strongly by Sen. Mark when he made his contribution. This was supported by the Barnett Report when they did their research and brought their report.

Mr. President, we have a situation where the existing facilities at the law school that I can speak about in our country—the Hugh Wooding Law School—the committee clearly identified that there was this constraint with very bright and capable students being able to enter that law school and being able to practise subsequently as attorneys-at-law in this country.

Now, given the fact that we are going to widen the net and bring in persons who would clearly circumvent the original intent of the legal profession—this was supported by the Barnett Report when it says:

“We are opposed to unrestricted admission of non-nationals to the bars of the Caribbean countries or to nationals being given a means of circumventing the essential requirements of our system by obtaining legal education and training provided by other agencies within or without the region.”

Mr. President, I hope that we can grasp what the Barnett Report is saying here. They are totally opposed to any circumventing of the traditions of the rules prescribed for entry into the legal profession and, therefore, to practise as attorneys-at-law.

Mr. President, when we bring a Bill to this Senate and we are asked to pass it which is clearly aimed at circumventing the Legal Profession Act which defines a Caricom national in such broad terms, then I believe that the worst fears of the Barnett Report are being realized. This amendment—as so many Senators have

Legal Profession (Amdt.) Bill
[SEN. DR. KERNAHAN]

Tuesday, March 04, 2008

said in their contributions—is not to advance the whole question of Caribbean legal education, to advance the equity and the ability of more of our bona fide West Indian and Caribbean students to enter into the legal profession and practise in Trinidad and Tobago. It is not to advance those laudable objectives, but to advance the cause of a small elite; a small minority of persons who would circumvent this whole Legal Profession Act that we have set up here, and come in through the back door, based on this legislation, which says that they only need to have a connection of any Caribbean state of a kind which entitles them to be regarded as belonging to that state. This is clearly not in the spirit of the Legal Profession Act. This is clearly not in the spirit of the Legal Profession Act; this is clearly not in the spirit of the architects of Caribbean legal education who have fought so long and hard, who have looked at our problems and who have recommended solutions and who have made recommendations with respect to quotas and overhauling the quotas.

In fact, the whole recommendation with respect to overhauling quotas should be that more of our young persons who are entitled and who are bona fide members of Caricom would be able to enter law school and practise as attorneys-at-law. So, when you circumvent that and bring in all these strangers into the system, then you are going against the very core and the very basic premise of our Legal Profession Act and the ideas and the ideals that the architects of this Act had.

Mr. President, up to 2005, in an article which says: Call for legal education reform in the Caribbean in Basseterre, St. Kitts, dated Monday, June 25, 2005, the Secretary General of Caricom, in the 11th Special Meeting of the Legal Affairs Committee that was being held in St. Kitts at that time spoke at this meeting and the article reads:

“Within the context of the CARICOM Single Market and Economy (CSME), the Secretary-General reminded of the commitment for the Single Market to be fully operational by 31st December 2005 and in this regard, stressed that the LAC (Legal Affairs Committee) would be called upon to ensure that any remaining restrictions in Member States would be removed to give effect to the CSME in keeping with the implementation timeframe.”

2.30 p.m.

So, up to 2005, there was this call by the Secretary General of the Caricom to remove the restrictions in our respective countries to give full implementation to CSME, but in this very meeting of the Legal Affairs Committee, the Regional

Attorney General commended this working group and this meeting. But this meeting made a recommendation that due to the fact of the impact of globalization, liberalization and delivery of services, including education, the importance of reform in the system of legal education and the need for curricula reform in the Caribbean, and it went on to talk about the need for reforming quotas.

So, Mr. President, the question of liberalization, of giving effect to the operation of a Caricom single market, in the context of legal education, all these issues of quotas, equity, justice, opening up the infrastructural facilities so that bona fide West Indian students, Trinidadian students, Tobagonian students, can effectively access legal education and be allowed to practise as attorneys-at-law in Trinidad and Tobago really need to be addressed. The issue of quota and the issue of expanding the infrastructure facilities at Hugh Wooding Law School have not been addressed. Right now, as we speak, Hugh Wooding is very cramped. The facilities are very poor in terms of the number of computers people have to use; the library facilities and so on.

Mr. President: Senator, this is by my count, I think the fourth time you are making the same point. Now, I have given you a tremendous amount of flexibility, but I have indicated that this Bill is not about legal education. The academic requirements for entry into the profession play no part in this Bill. It deals only with the nationality of persons who can be accepted into the profession. Therefore having said it four times, we have heard it; I do not think it needs to be repeated. I want you to come back specifically to the Bill.

Sen. Dr. J. Kernahan: Thank you, Mr. President. The issue is that the Bill before us, in the context of the structural problems that we have in the legal education is out of context. We are saying that there is need to address some of the basic deficiencies so that our students, our nationals, bona fide Caribbean nationals, nationals of Caribbean countries will have equity, justice and fair access to legal education, so that they can practise as attorneys-at-law in Trinidad and Tobago and in their respective Caribbean countries.

We are saying that the amendment before us is counterproductive; it has nothing to do with the vision for legal education, for the evolution and for the betterment of legal education in this country. We are saying that although we are asked to conform to the provisions for removing restrictions so that the CSME treaty can be adhered to in Trinidad and Tobago, the wording of this amendment is not in keeping with the intent. If the intent is that you want to comply with the provisions of the CSME; that you want to remove restrictions so that Caricom nationals and bona fide nationals can practise as attorneys-at-law in any

Legal Profession (Amdt.) Bill
[SEN. DR. KERNAHAN]

Tuesday, March 04, 2008

Caribbean country, that is one issue. But we are saying the actual wording of the treaty is not in keeping with that intent and that will bring the question of inequity and injustice to our students and to our Caricom nationals, because it is going to involve the influx of persons who are in effect, circumventing the Legal Profession Act, and that is the point. We are saying that this is circumvention and it is not bona fide; it has nothing to do with the stated objective. In fact, it is going against the very core ideals and aspirations of the Legal Profession Act.

Mr. President, I would like to support the Members of the Senate who have made these points and I want to reinforce these points. On behalf of bona fide members of Caricom, I am saying that this amendment is counterproductive and it will not work in the benefit of Caricom nationals.

I thank you.

Sen. Cindy Devika Sharma: Thank you, Mr. President. I am here just to make a very brief contribution to this proposed amendment to the Legal Profession Act. The area I wish to examine and to draw to the attention of the Government was raised earlier by Sen. Seetahal SC, with reference to the entry of lawyers into the system and having opened up the market, eventually we would have availed ourselves of a wider pool of resources throughout the region, which is of course, a positive development.

There are many positive aspects to opening up the market locally. However, before adopting measures wholeheartedly, we need to be very careful and examine the long-term consequences of every action that we take, and it is no less so with a Bill such as this.

On the point of opening up the market, it means in one respect, that we would have supposedly the best minds in the region migrating throughout the region, and obviously availing themselves of better opportunities in those places that offer them. The downside of this, however, is that there is also the possibility that because of widespread disparities that exist in terms of the smaller economies within the region, these nations will be severely disadvantaged, and their best minds obviously will be leaving them for greener pastures. Similarly, of course, we might suggest that our lawyers will be able to avail themselves of wherever those greener pastures are.

I do feel that where we prefer to have a meritocratic system, where we have access, for example, to free education or education in an area that we might choose, this could lean towards a future where we have these lawyers coming in and our own lawyers competing in this very competitive market, so that it could

actually develop into a very elite system, working against the move to establish a nation that is truly equitable in the distribution of resources and opportunities, this might be something to consider. If we become a very fiercely competitive market, those who are very disadvantaged, obviously, will continue to be so and it will even increase over time.

We need to ask ourselves, not only how Trinidad and Tobago will perhaps benefit from such legislation, but what possible impacts we are going to have on our island brothers and sisters in the Caribbean and Caricom nations. This is something important if we are really speaking and want to create a truly united Caricom. If we are united, it means that we must be able to strengthen our brothers and sisters wherever they have their own weaknesses and hopefully they would be able to provide the same reciprocity with us.

I do feel that one point Sen. Seetahal SC made concerning the best minds for example, who enter the law school and eventually become lawyers, I think, as a teacher at least, it might be a bit unfair to those students who are slow learners, because it does not mean that if someone takes 10 years to do something that they are not necessarily going to be the best mind eventually. I am sure there might be some learned persons here who could probably say that they were not perhaps the best student at the time. So that slow learners might be discriminated against in this system.

In addition to which, one other concern I have is what are we doing in terms of the labour mobility component of CSME to which this legislation speaks directly. What are we doing to ensure that there is an equitable distribution and redistribution of these internal migrants, in this case, lawyers within the system?

Along with that point, I just want to draw attention to one concern I do have in terms of the kind of statistics that are being recorded and studies that are being done to really examine closely, intra-regional migration, particularly with regard to skilled professions, such as the legal profession. This is important because this is a very important component of the human capital of our nation. To be quite honest I am not aware that Trinidad and Tobago—at least those persons or ministries, perhaps those bodies that are supposed to have the information—are not aware of how knowledgeable they really are about the characteristics of our local workforce, per se, lawyers or the legal profession in this sense.

We perhaps might know the exact quantity and skills, but what are their needs? What service has been done to find out what their needs are? What are their concerns about the development of their profession? What are their concerns with opening up their own market in terms of their own profession? As we said

Legal Profession (Amdt.) Bill
[SEN. SHARMA]

Tuesday, March 04, 2008

earlier, there is a limitation on the number of graduates leaving, so that there is this control on the numbers of the legal profession. That is all well and good if we want to seek to control it here, but obviously opening up the market seems to be a kind of contradictory approach, if we want to look at it from that perspective.

I think that one important thing that should be done is that we need to be able to get more data on our lawyers specifically, and this will really speak to how we can keep the best minds here and perhaps spread the knowledge that we have to assist those Caricom nations that might be more challenged when it comes to such legislation.

I think that if we are to continue moving towards the development of our nation, we have to ensure that we keep our lawyers—who we know for a fact are very talented and knowledgeable—and offer the best incentives to them. We also need to ensure that the Caribbean region is able to support each other in the achieving of the goals of CSME.

In conclusion, Mr. President, since we are preparing and enacting legislation that has such long-term implications, again I want to reiterate the point that we need to carefully deliberate at all times and not just jump when we see a few benefits to be held or to be had in the short term, but really think about it in terms of, not 20 years, but 50 years from now. This is an important thing to consider and I hope that it is taken into consideration on the Government's part.

Thank you, Mr. President.

2.45 p.m.

Sen. Dr. Adesh Nanan: Thank you, Mr. President. As I rise to continue the debate on an Act to amend the Legal Profession Act, 1986, I do so in an atmosphere of uncertainty, an atmosphere of a rising crime rate, a situation where a businessman is shot and killed on Frederick Street. That is the situation we have. Today we have an Attorney General bringing a Legal Profession Act with one or two clauses to debate here. That shows the failure of the Government.

We are here to discuss the entry of Surinamese and Haitians to practise law and we have heard from the Senator with respect to the restrictions that are already there, and there is a high possibility that they will not be able to practise as a lawyer being a Haitian or Surinamese in this country. In this debate we have heard in this Senate about the breaching of the Caricom Treaty— and I will deal with that in detail—breaching of the treaty that set up the Legal Education Council, and that is totally false. It is relevant here because it is important to

understand the concept in which that particular amendment was made to the Legal Profession Act at the time and I recall that it was in 2000. It was done so because of that same situation with respect to attorneys not being allowed to practise here coming from the common law jurisdiction.

It is important, Mr. President, to put it into context and to show quite clearly that in 2000 the treaty was not breached—

Sen. Seetahal SC: Really!

Sen. Dr. A. Nanan:—and I will tell you. In fact, I will go through a chronological sequence if you will allow me, because I have to show why the treaty was not breached this afternoon. It was done so and we were given a chronological sequence in terms of the Legal Education Council, but I want to just take it up a little with respect to the 2000 situation.

Sen. Annisette-George: I did not say that.

Sen. Mark: Not you.

Sen. Dr. A. Nanan: You did not say that, but it was mentioned in this Senate and I have to put the record straight, Mr. President.

Sen. Mark: “Yuh was sleeping”. You did not know what was going on. “Yuh was taking a rest”.

Sen. Dr. A. Nanan: So you cannot stand up on Standing Order 35(1) here, Minister in the Office of the Prime Minister.

Sen. Mark: You were taking a rest as usual, sleeping.

Sen. Browne: Better to sleep than be irrelevant.

Sen. Mark: No, you are not to determine that, Sen. Browne, only the President.

Sen. Dr. A. Nanan: Mr. President, the treaty that set up the Legal Education Council was based on a premise of a Caribbean flavour with respect to the Caribbean and nationals. But we had a situation where—let us deal with our nationals because some of our nationals went abroad because they could not get into the Faculty of Law.

I do not know how many of you recall but there is a provision where students who do not take law subjects can still become lawyers. [*Interruption*] That is a possibility and I am considering that, Mr. President, because students who are not taking law subjects can move into the profession. [*Laughter*] And I will show you

how, because when I read the *Hansard* of 2000 the Common Proficiency Education Examination that is done in England allows you to get a graduate diploma, you can utilize that to do vocational training and you can become an attorney. You can become a solicitor or barrister, and because of the amendment in 2000 you can come here and do your six-month internship with a lawyer who has 10 years experience.

Sen. Seetahal SC: That is the breach.

Sen. Dr. A. Nanan: And I now hear that is the breach. But, Mr. President, that is the position. [*Interruption*] In fact, that was done so because the university recognized that people who have other degrees like Chemistry, and Geology would have wide experience and they would bring that kind of experience to the profession, and you could use that graduate diploma now to move further. So, not only do you have to take law subjects, you can utilize a graduate diploma, utilizing your undergraduate degree, so you can do that exam and you could go on to become a lawyer. It can be done in two years.

Sen. Seetahal SC: No, you have to accelerate the programme.

Sen. Dr. A. Nanan: In two years you could do your graduate diploma and then you could go on to either becoming a solicitor or a barrister and you can come back here and become an attorney, so that is a high possibility. You do six law subjects as you enter that particular area, there is an opportunity there. So, when you talk about limiting the number of lawyers and setting standards, and the reason as I read, in terms of beyond 1996, what happened is that we had an influx of requests to become lawyers and you had to introduce the exam. We had it already.

We had a situation in another area where people were being limited based on an examination, and again at that time in 2000 it was done where the amendment was made. There was no breach of the treaty and the reason there was no breach of the treaty, because we are dealing with Trinidad and Tobago nationals. At that particular time, Mr. President, what was also—I want to inform you, you are quite aware that the Attorney General of the Caribbean was part of the Legal Education Council and representation was made to the Legal Education Council based on students trying to become attorneys and they refused. They refused to budge saying that an independent body—

Sen. Dr. Saith: Mr. President, on a point of order, again.

Sen. Mark: What is your point of order?

Sen. Dr. Saith: Are you the President?

Sen. Mark: I want to know what is your point of order! [*Laughter*]

Mr. President: Senators!

Sen. Mark: Let us hear.

Sen. Dr. Saith: Standing Order 35(1).

Sen. Mark: No, sit down.

Sen. Dr. Saith: This—

Sen. Mark: Give us the explanation, Mr. President.

Sen. Dr. Saith: No, please. [*Crosstalk*]

Sen. Mark: Mr. President, has he given you the explanation, Sir?

Mr. President: Sen. Mark. [*Laughter*] Sen. Mark, please! Allow him to make his point, because I would like to hear it and you are disturbing me from hearing it. [*Interruption*] [*Laughter*]

Sen. Dr. Saith: So, Standing Order 35(1) merely talks about relevance, I want to indicate what I believe is the point. [*Interruption*] The hon. Senator is talking about Trinidadians being allowed to practise and to go to school. This Bill does not deal with Trinidadians practising before the court. It deals with Commonwealth and an expansion of Commonwealth.

Sen. Mark: You were not even here, you were out of the country. [*Inaudible*] So, take your seat.

Sen. Dr. Saith: Irrelevance again. And he could tell us who amended the Act and who benefited. [*Laughter*]

Sen. Mark: Yes, I will, but not now. [*Laughter*]

Mr. President: Senator, I will ask you to focus on what we are talking about, I will follow you. [*Interruption*] Sen. Mark, please! Enough! [*Interruption*] Enough, Sen. Mark! Sen. Dr. Nanan, please.

Sen. Mark: [*Inaudible*]

Sen. Dr. A. Nanan: Thank you, Mr. President. I do not want injury time, but I could reply to the Minister in the Office of the Prime Minister; it is not my role, it is the President's role, so I will continue. In terms of the treaty, the treaty was not breached, because there was a situation at that time—and as I was going on to show before I was rudely interrupted. [*Laughter*]

Sen. Mark: You like that. [*Laughter*] [*Crosstalk*]

Sen. Dr. A. Nanan: Mr. President, I was going on to show the relationship and what happened at that time whereas the treaty was not breached because the Attorney General of Trinidad and Tobago made representation within the Legal Education Council and got no favourable response.

Sen. Mark: Let him take action.

Sen. Dr. A. Nanan: He got no favourable response with respect to this particular situation—

[*Sen. Dr. Saith leaves Chamber*]

Sen. Mark: I thought you were rising again, “Lenny”.

Sen. Dr. A. Nanan:—and it was not in isolation, because there were other governments, who, within the Caribbean wanted to go into bilateral arrangements with Trinidad and Tobago because there was talk of a college of law and bilateral arrangements at that particular time could have taken place. People of other countries were interested. You would have had the reciprocity where Trinidad and Tobago nationals could have practised in that particular country where the bilateral arrangement was, and that was the situation.

So, there was no breach of the treaty. It was a decision taken by Trinidad and Tobago with respect to the Legal Education Council, and if you go back to the treaty you would see in the Cayman Islands they had restrictions there. The Cayman Islands restriction on that particular treaty showed that they did not conform to the view that you must have a legal certificate of education. They wanted lawyers from outside, so they had an exception to the Cayman Islands. I do not know; the exception must be still going on because they are not restricting it to these various law schools within the Caribbean. [*Interruption*] The Cayman Islands also had that particular arrangement at the time. I think the Bahamas, also asked for the exception where they would not only have to have the Legal Education Certificate for them to practise—so those are the areas.

When you look at that particular statement about breach, there was no breach of the treaty. In fact, in the other place—someone who contributed to the debate said there was no breach of the treaty. There was just a breach of the spirit of the treaty, that was the kind of position that was taken. So, there was no breach and what we have now, because of this situation in 2000, that has now come forward where people can come here from the common law jurisdiction, work with a lawyer who has 10 years experience, once they are qualified. In fact, the students

who have been trained in the UK and can actually appear in courts were debarred from practising in Trinidad and Tobago because of the restrictions based on the exam and the shortage of—

Sen. Seetahal SC: [*Inaudible*]

Sen. Dr. A. Nanan: But they had to get in first to do the six months?

Sen. Seetahal SC: That was not confirmed either.

Sen. Dr. A. Nanan: That was the situation, Mr. President. That is why I just wanted to put that in context in this particular debate and say there was no breach of that treaty. But we have to go on to ask the question because the Bill talks about another area that is vague that was mentioned here, and I want to also mention that. We are dealing with clause 2, section (4A):

“‘CARICOM national’ means a person who—

(a) is a citizen of a CARICOM Member State;...

Now we are dealing with only two countries which are Suriname and Haiti that would be the beneficiary to some extent. But we also have the (b) which is very vague, and of course, amendments will be proposed and amendments will be made.

But, Mr. President, when you look at the Caricom situation, whether it be Suriname, Haiti, Barbados and the Treaty of Chaguaramas in terms of the movement of skilled labour we have to also ask the question, why this piecemeal approach to legislation in the Senate? Why this piecemeal approach, because if you recall the Treaty of Chaguaramas gives a step-by-step approach and says that we will do each profession as the need arises. The Attorney General should have come in this Senate and done her homework with respect to this particular arrangement in the treaty, because there are other professions standing by.

When you come with this particular piece of legislation before the Senate with respect to Suriname and Haiti, would you also come with the situation with the doctors in Suriname and Haiti, and then you go on to, probably the dentists in Suriname and Haiti, and so you will move? I think what we should have done was take the professions as a body rather than go one by one on a case by case basis. You see the Attorney General does not have time. The Attorney General was too busy playing mas on Carnival Monday and Tuesday. Apparently the Attorney General has not recovered yet from that particular event, [*Interruption*] because we cannot even get a simple question answered in this Senate. [*Interruption*]

Legal Profession (Amdt.) Bill
[SEN. DR. NANAN]

Tuesday, March 04, 2008

So, Mr. President, we can look at other areas in this particular piece of legislation, but I think I made my point with respect to the—

Sen. Browne: Which one is that? [*Laughter*]

Sen. Mark: Were you sleeping, Sen. Browne?

Sen. Dr. A. Nanan: Sorry.

Sen. Mark: You were sleeping or something, Sen. Browne. [*Laughter*] He has made his point.

Sen. Dr. A. Nanan: Apparently. Yes, Mr. President, because I had to show—

Sen. Mark: I hope you are not sleeping like Sen. Dr. Lenny Saith, you know?

Sen. Dr. A. Nanan: He always—anyway I have nothing to say about the Minister in the Ministry of Finance. [*Interruption*] No, I would not say anything unparliamentary.

I thank you, Mr. President, for my contribution in the Senate.

3.00 p.m.

The Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne): Mr. President, I rise to make a few brief comments on this Bill to amend the Legal Profession Act, Chap. 90:03, to allow Trinidad and Tobago to conform to the treaty obligations under the Treaty of Chaguaramas, establishing the Caricom Single Market and Economy.

I have listened to a number of points that have been made, and certainly note the comment that the amendment should have incorporated a number of other professions. I think Protocol 2 to the treaty which is generally agreed to by Caricom, sets out a number of professions for which free movement is established and it is up to the relevant profession to take advantage of the protocol. It is simply because the Council of Legal Education is a very well-established precedent that this amendment has come. In addition to this, I was interested in a number of the comments which were made, which appeared to be quite jingoistic in their origin and also too way off the mark, the continued emphasis with respect to the Council of Legal Education on law schools.

This Bill is not about legal education. This Bill is to allow different members who come from different parts of Caricom, the opportunity and the capacity to practise in the Trinidad and Tobago jurisdiction. I was very interested to the point that other professions should do it. In point of fact, I think that there are several

examples and I will speak to one profession of which I am a member which, prior to coming into being of the Treaty of Chaguaramas—this is the Institute of Chartered Accountants of the Caribbean which was formed in 1970.

In fact, it predated the Treaty of Chaguaramas and it allowed, if you want, basic standards of recognition across the Caribbean and basic recognition of practices that will be involved in the accounting profession across the Caribbean. This has been in existence and is still continuing after 37 years. Every year the accountants meet and we talk and chat on this particular matter and deal with many issues along this line. So, it did not require an Act, it required an act, if you want, of will, on the part of the profession itself, something that we need to remember. I think I have made this point before, that the various individual professions need to stand up and be counted, particularly when we are talking about the spirit of Caricom.

Mr. President, I can do no better, if only to repeat the chorus of what should really be the anthem of the Caricom movement: "This is one Caribbean, one race, the Caribbean man from the same place, the Caribbean man that made the same trip on the same ship, so we must make one common intention..."—[*Interruption*]

Sen. Mark: Sing for us.

Sen. The Hon. M. Browne: I cannot sing. I am not a musician and I am not a vocalist either—"for a better life in the region for we women and we children and that must be the ambition of the Caribbean man". Mr. President, this is all that this Bill seeks to do. That is all. It is very simple, very easy. So that it deals with a matter of common courtesy of putting certain things into position that we promised that we would do.

In addition to that, I was interested in the comment made by the Senator on the other side, with regard to the widespread disparities that exist amongst the Caribbean territories, so that by putting this Act into force, some people would leave some of the other jurisdictions and come to Trinidad and Tobago to practise.

I do not think any of the attorneys in Trinidad and Tobago suffer from an abundance of competition in our market from other Caribbean countries. If we did, we would certainly have heard loud protestations to that point and I have not heard them. I certainly did not hear it in the contribution by Sen. Mark, who did in fact consult with the law society; I did not hear them complain in that regard. There were also veiled references to the fact that people can come in from anywhere in the Caricom and particular mention was made of Haiti and Suriname. I think Sen. Dana Seetahal SC dealt with that point, so I would not deal with it. But I think some

Legal Profession (Amdt.) Bill
[SEN. THE HON. M. BROWNE]

Tuesday, March 04, 2008

of the comments also betray a certain meanness of spirit and I need to say that, because during the time I spent in Barbados—and since that has often been commented on, I need to speak about my time that I spent there.

I have come across a number of attorneys, in fact, the reverse is true; Trinidad and Tobago has been exporting lawyers throughout the Caricom region and I think we need to recognize that and this Bill is required if only from the point of view of reciprocity; a simple fact of reciprocity which is required. Mr. President, a simple matter of reciprocity, I think that is required.

Sen. Mark: Haitians.

Sen. The Hon. M. Browne: I do not think we have any Haitians practising in Trinidad and Tobago, but you could correct me if I am wrong. But what would be wrong if they did? There are no Haitians practising in Trinidad and what would be wrong if they did?

Sen. Mark: Nothing.

Sen. The Hon. M. Browne: So, I do not understand what the point is. I have no idea what point is being made. The simple matter is that we need to recognize what our aspirations are as Caribbean people. In fact, we are simply putting the clock back to where we were in 1960. We became Independent, we acquired a flag; in fact, most of the Caribbean countries became Independent and acquired a flag. There were no difficulties in terms of free movement of professionals before independence, there were none and there are not to be any now. Certainly that is the position under Protocol 2 and that is certainly the spirit of the Bill and I think we need to be clear on that.

But to go back to my experience in Barbados, it is very clear that the profession in Barbados has amongst its ranks, many Trinidadians and Tobagonians with no connection to Barbados other than the fact that they are interested in working there and want to work there. I do not think we have the difficulty in terms of the inequitable movement of people. In fact, we have movement, emigration out of the Caribbean every day. Some of our best minds leave to go to other jurisdictions, not merely in the Caribbean, but elsewhere and people have the power of choice. People make a choice in terms of where they want to live and we cannot do very much about that. What we need to do is simply recognize what our obligations are and I make the point that other jurisdictions welcome us; there are Trinidadians and Tobagonians who practise not merely in law, but in accountancy, as engineers, as doctors, in a variety of professions, all across the region and they do so freely.

Mr. President, I think this is a wonderful Bill, I support it and I encourage and endorse its sentiment. Thank you. [*Desk thumping*]

The Attorney General (Sen. The Hon. Bridgid Annisette-George): Thank you, Mr. President. In winding up this debate, I would first like to say that I am a proud “Trinbagonian” and also recognize as part of that, I belong to a bigger community which is Caricom, the Caribbean and the West Indies. [*Desk thumping*]

Mr. President, I would first like to address one of the last contributions and this came from the hon. Sen. Dr. Nanan and this is with respect to the piecemeal nature of the legislation. My recollection is that the hon. Senator would have been a Member of the Eighth Parliament of the other House, and maybe with the passage of time he may have forgotten, but I take this opportunity to remind him that in 2005, the Caribbean Community (Removal of Restrictions) Act was passed in Parliament and the effect of that was to remove from most of our domestic legislation, measures which were identified by the sub-committee of Caricom that deals with trade and economic development, COTED. COTED had identified a number of discriminatory or restrictive practices in the domestic law of the member states. The omnibus piece of legislation of the Caribbean Community (Removal of Restrictions) Act sought to deal with most of the discriminatory provisions.

However, Trinidad and Tobago sought to make a special case with respect to sections 15 and 16 of the Legal Profession Act. Those sections were initially identified as discriminatory. Trinidad and Tobago sought to make a case and that is why the Legal Profession Act was not captured by the Caribbean Community (Removal of Restrictions) Act. It is only late in 2005, that the General Council of Caricom ruled decisively against the case made by Trinidad and Tobago and held that those provisions were in fact restrictive and discriminatory. Maybe then, in that context, if I were a different person, I might seek to claim the fame of having identified the need to do it at this stage. However, I am sure the hon. Senator would also recall that this Bill lapsed in the last Parliament, and it was therefore brought here before now to deal with our treaty obligations.

Mr. President, I want to put this particular amendment in context because a lot has been said about legal education and admission to practise and so on, and maybe it is because the amendment has come outside of the language of the entire Act that it may have missed the attention of many of the contributions here. Now, section 15 of the Legal Profession Act reads as follows:

Legal Profession (Amdt.) Bill
[SEN. THE HON. B. ANNISSETTE-GEORGE]

Tuesday, March 04, 2008

- "15(1) Subject to this Act a person who makes application to the High Court and satisfies the Court that he—
- (a) is a commonwealth citizen,
 - (b) is of a good character, and either
 - (c) holds the qualifications prescribed by law, or
 - (d) is a person in respect of whom an Order has been made under 15(A),"

Mr. President, what this section talks about, is making application to the High Court to be admitted to practise. It is not unusual for many pieces of legislation, in requiring one to make an application, seek that one sets out that one has what is called in law, locus standi, and very often locus standi is shown through residency requirements, citizenship requirements, nationality requirements, so that according to section 15(1) of the Act, it talks about one being a Commonwealth citizen.

Now I cannot think how much wider "Commonwealth citizen" could be when you measure it against "Caricom national", because a Commonwealth citizen could be an Australian. Okay, I am guided by the hon. Sen. Dana Seetahal SC, 52 countries belong to the Commonwealth. All this section seeks to do as regards locus standi nationality, is to introduce another grouping which would be "Caricom national". All of the other Commonwealth Caricom member states save two, would be caught in the category of Commonwealth citizen. *[Interruption]*

Sen. Dr. Nanan: I know that. *[Inaudible]*

Sen. The Hon. B. Annisette-George: The only two which will not be caught will be Haiti and Suriname.

Sen. Dr. Nanan: *[Inaudible]*

Sen. The Hon. B. Annisette-George: Well it did not appear that you knew that and that is why it is being explained. *[Laughter]* So that it is only in respect of nationality that this has come into play. All the other requirements in making one's application, in satisfying the court would have to be established; the court would have to be satisfied.

So that this amendment speaks nothing with respect to which is already 15(1)(c), "holds the qualifications prescribed by law". So this has nothing to do with admission to the law school or the law faculty.

3.15 p.m.

Sen. Mark: Attorney General, [*Inaudible*]

Sen. The Hon. B. Annette-George: Do you want me to give way? Is that what you are saying?

Sen. Mark: Yes. I would just like the hon. Attorney General to interpret for us from the Constitution the definition of the Commonwealth. If you look at section 18(3) of the Constitution, you will recognize that only some Caribbean countries which are members of Caricom are recognized under our Constitution as being part of the Commonwealth: St. Kitts/Nevis, Antigua, Barbuda, Dominica, et cetera, are not included. So I want to know if the hon. Attorney General could clarify that for us because maybe this definition which we are proposing today, including just Haiti and Suriname, will leave out countries that fall within the Caricom family.

Sen. The Hon. B. Annette-George: Sen. Mark, I will refer you to the same section 18(1) which talks to “any law for the time being in force in any country to which this section applies,” and it talks with respect to from time to time. So you may be reading this as it then stood, but the Commonwealth countries now include all 52 countries. [*Desk thumping*]

Sen. Mark: I just sought clarification

Sen. The Hon. B. Annette George: Mr. President, with respect to the qualifications as prescribed by law, those remain as set out in the Legal Profession Act, and they are not affected. I also want to draw to this honourable Senate’s attention, sections 15(A) and 16 of the Legal Profession Act. Section 15(A) in the Act would have allowed people who were Commonwealth citizens and admitted to practise in another Commonwealth jurisdiction for at least 10 years to be eligible to practise in Trinidad and Tobago. So even though they did not have the LEC and had practised in a Commonwealth jurisdiction for over 10 years, they would become eligible to practise. So this question and concern about opening up a floodgate, our Legal Profession Act, as it stands allows persons who are Commonwealth citizens who have not obtained the Legal Education Council Certificate (LEC) but have obtained qualifications in a Commonwealth jurisdiction, who have practised in a Commonwealth jurisdiction for over 10 years to be eligible to practise here, and we have seen it. We have seen several English QCs appearing before courts in Trinidad and Tobago which means that they have applied and have been admitted to practise here. I wonder if we are so welcoming to people of the Commonwealth, what really is the big issue about two other member states of the Caricom region?

Legal Profession (Amdt.) Bill
[SEN. THE HON. B. ANNISETTE-GEORGE]

Tuesday, March 04, 2008

Sen. The Hon. Mariano Browne made the point that Trinidad and Tobago in fact exports attorneys-at-law to the Caribbean. Just a few weeks ago we announced a new Chief Justice, and I am sure it would not have escaped the hon. Senators on the other side because I know your Members have said in another place how good certain newspapers are, and the CV of the hon. Chief Justice was much publicized in the media and it would have shown that he was solicitor general in one of the Caribbean countries, and many established legal firms of Trinidadians exist in places like the British Virgin Islands, in St. Lucia and in Grenada. Many students of the hon. Sen. Dana Seetahal SC of the law school now practise in Barbados. So sometimes we have to be careful when we are studying to be insular and recognize the Caribbean as a region.

Mr. President, I particularly want to address for the purpose of setting the record straight certain issues that were raised, and mention was made many times of the Barnett Report. The hon. Sen. Mark in his contribution spoke about over 1,000 persons being out there with law degrees working for \$40 and who are farmers and all sorts of things and I want to say it is a case of “do so ain’t like so” because in his own contribution he called for statistics and information to support what was presented in support of the Bill. However, when he speaks of the thousands of persons who have LLBs and are unable to gain access into the law school and who have been working for \$40—I think it is a month, Sen. Mark?

Sen. Mark: A day.

Sen. The Hon. B. Annette-George: A day. Well, that is high; that is about the minimum wage—but he has not been able to provide any proof of that.

Sen. Mark: You want the proof?

Sen. The Hon. B. Annette-George: Not at all, you have lost your chance.
[Laughter]

With respect to gaining admission to the Hugh Wooding Law School—and I think Sen. Dana Seetahal SC dealt with it very well in her contribution—but this is purely to put the record straight. The law school was designed for there to be a sort of seamless education in legal training with a Caribbean focus, and in terms of providing for students, those who have attended the University of the West Indies (UWI) have an automatic right of entry into the law school.

However, in 1998, again recognizing the need to provide for the Caribbean and the wider West Indian community, an agreement was arrived at between the Council of Legal Education and the University of Guyana to oblige the Hugh Wooding Law School to accept 25 students coming out of the University of

Guyana every year. There has also developed in recent times, and according to the Barnett Report, developed over time a practice of persons acquiring their LLB outside of the University of the West Indies and for fear that in the absence of some universal mechanism that admissions may have been seen as some form of favoritism, the examination process was implemented so that all applicants who obtained their LLB outside of the University of the West Indies would have been afforded an opportunity on a level playing field to apply, and it is by virtue of merit that people apply and are admitted.

Now, when we say that nationals of Trinidad and Tobago have not been treated fairly and discriminated against—this is outside of the people who come in naturally from UWI. In 1997 when the examination started, of the 17 places won through the examination process—so these are persons who got their LLB outside of UWI—seven of the 17 were Trinidadians; in 1998, 15 of the 28 were Trinidadians.

Sen. Mark: How many of them sat?

Sen. The Hon. B. Annisette-George: We are looking at how many places were won, because in any event, any institution is going to be limited by space. We have given first preference to all the students coming out of UWI who come from certain jurisdictions: Trinidad and Tobago, Grenada, St. Lucia, Barbados; and Sen. Seetahal SC would have told us in her contribution—because she was at the law school until last year—that very often, you have 160 students from Trinidad and Tobago in the classes, and that Barnett Report that Sen. Dr. Kernahan referred to is somewhat dated with respect to 110 students.

In my own experience at the law school, I have marked many more than 110 scripts and one is very fortunate if there are more than two St. Lucian students, more than four Grenadian students, and more than one Dominican student. You tend to have, maybe 20 Bajan students, but when it comes to the other islands, generally, they do not make 20 in sum. So the law school's numbers are really dominated by Trinidad and Tobago students. But coming back to your point about the places won and the examination, in 1999, of the 36 who won places 29 were Trinidad and Tobago nationals, in 2000, of the 34 places won, 29 were Trinidad and Tobago nationals; 2001, 18 places won, 16 were Trinidad and Tobago students and the story goes on; in 2002, 36 of the 38 were Trinidad and Tobago students. So you could talk about numbers—

Sen. Mark: What about this year?

Sen. The Hon. B. Annisette-George: I do not have this year, but I have 2007. Of the 21 who won places, 20 were Trinidad and Tobago students.

Sen. Mark: How many sat?

Sen. The Hon. B. Annisette-George: Let us talk about how many sat and put that against how many have made the mark. So 183 sat in 2007, these are persons who have not obtained UWI certification, London LLB, of the 183, only 21 qualified so it may say something about other programmes.

Sen. Mark: How many places were available?

Sen. The Hon. B. Annisette-George: I cannot answer you about how many places were available, but I can tell you how many persons obtained a satisfactory mark to qualify.

Sen. Mark: How many in 2007?

Sen. The Hon. B. Annisette-George: I just told; you in 2007 183 sat, 21 passed, and of the 21 who passed 20 were Trinidad and Tobago nationals. I do not know if you are trying to say—and I would want to respectfully borrow the words of a very eminent Chief Justice of Trinidad and Tobago. I do not know if what you are saying is that “the pass mark should move.”

Sen. Mark: I never said that.

Sen. The Hon. B. Annisette-George: I do not know if that is what you are trying to insinuate. So therefore, maintaining the bar, whatever it is, of the 183 who sat, only 21 obtained the requisite grade, and of those, 20 were nationals of Trinidad and Tobago. So I do not know how we could be laying any claim to not providing for our own.

Mr. President, Sen. Mark also referred to not making provision for the future, and expanding spaces and again, Sen. Dr. Kernahan referred to something like that, with no sort of vision for expansion and education and that sort of thing.

3.30 p.m.

There are plans that are ongoing now to expand the current law school. In fact, the building brief has been now referred to consultants and \$2 million has been allocated in this year’s budget with respect to the building brief, and so on. Currently, a parcel of land immediately to the south of the law school has been identified and efforts are being made to vest that parcel of land in the Sir Hugh Wooding Law School for the purpose of expansion. So this Government is not sleeping. This Government is taking care of its nationals—[*Desk thumping*] but also mindful of its commitment to Caricom.

Sen. Mark also spoke about a manpower audit and you are quite correct, because before we could talk about too many lawyers, whether in Trinidad and Tobago or in the Caribbean, we need to do a manpower audit. Just to tell you that our true Caribbean people, those among us who are really for the integration movement; those among us who recognize that to withstand the effects of globalization we have to bind together as one region, they have not been sleeping; they have been doing their work.

I want to refer to a letter dated February 20, 2008 from the Caribbean Community Secretariat and it is addressed to the Attorney General and it reads as follows:

“Dear Honourable Attorney General

Re: Legal Human Resource Needs Assessment Project.”

And if you will indulge me to just read a paragraph or two from this letter;

“The Caribbean Community (CARICOM) Secretariat takes this opportunity to advise on the status of the Legal Human Resource Needs Assessment project, which is currently being undertaken in collaboration with the Caribbean Centre for Development Administration (CARICAD), and requests your assistance in providing relevant information to the Consultants. In this regard, please find herewith...”

And there is a questionnaire. Going on to one of the paragraphs, it refers to:

“At the inaugural meeting of the LAC...”

And the LAC is the Legal Affairs Committee of the Legal Education Council.

“Working Group on Reform of Legal Education in the Caribbean...”

which was held way back in September 2004; and it was agreed that there was an urgent need for a review of the quota system currently in effect in the region.

“However, it was felt that a review of the quota system necessitated clear information regarding how many lawyers were needed in the Region, by governments as well as the private firms and the areas in which such lawyers were required.”

And I am quoting here so I would not say “humongous”.

“You may also recall that the Working Group agreed that a needs analysis/assessment of legal services should be executed and ‘mandated the CARICOM Secretariat to ensure that such an analysis was carried out, through

Legal Profession (Amdt.) Bill
[SEN. THE HON. B. ANNISSETTE-GEORGE]

Tuesday, March 04, 2008

the use of information currently available to the Secretariat as well as through the commissioning of a consultancy on the basis of a methodology and terms of reference elaborated by the Secretariat, with the assistance of the CLE.”

So that the human resource audit is ongoing and I am pleased to inform you that as recently as Thursday, January 21, 2008, the survey was conducted with respect to acquiring information about the human resource needs as far as the legal aspect in Trinidad and Tobago is concerned. So that we are taking care of our own but, again, in the context of our obligations to the wider Caribbean Community.

I would also like to address the particular clause that defines “Caricom national” in the legislation, which most of the contributions spoke about, and whether they supported the amendment or not, referred to the fact that the language is somewhat cumbersome. That is not strange at all for treaty language; it is not strange at all for legal language. But the actual wording of the clause—that Part II—is deliberately wide and vague. It takes into account that there are different sorts of requirements throughout the member states which deal with citizenship, residency, domicile and natives. There is no universal language among the 15 member states and, therefore—and particularly in addressing the contribution of Sen. Drayton—that was the limitation in using language that may be very familiar to us in our immigration law and specific to us. Because there is not that, sort of, universality in the language in the various member states, that the terminology had to be somewhat wide.

It is the terminology that is accepted and adopted in the treaty and for purposes of consistency one tends to replicate terminology used in a treaty in enacting legislation. One, it shows that you are complying; two, it does not introduce any sort of ambiguity between what was agreed in the treaty and what you are enacting in domestic law.

Having said those words, I would like to really call on all Senators to look at this amendment Bill in terms of the wider Caribbean integration movement. Caricom certainly envisages free movement of, not just goods, but of labour. That has benefited us as Trinidadians and Tobagonians in the past and it continues to benefit us. I think the issue with respect to brain drain which was raised by Sen. Sharma, is really more speculative than what is the reality. We have really, as far as the Caribbean, been populating the Caribbean with expertise and experience. It is not unusual to call a senior counsel in Trinidad and Tobago and to be told that tomorrow he would be in St. Vincent or Grenada and back in Trinidad and Tobago on Friday to do another matter. In fact, it would not have escaped the

national attention that recently there were the appeals of the persons involved in the revolution in Grenada and those were represented by an attorney-at-law who resides, practises and is a native of Trinidad and Tobago. So I think we have really been the beneficiaries of free movement of people.

I therefore wind up my contribution and I beg to move. Thank you, Mr. President. [*Desk thumping*]

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Clause 1 ordered to stand part of the Bill.

Clause 2.

Question proposed, That clause 2 stand part of the Bill.

Sen. Mark: Mr. Chairman, we had brought to the Attorney General's attention some very grave concerns as they relate to the ambiguous, vague and wide definition given to a Caricom national. I drew to the Attorney General's attention, a letter that was submitted to us from the Law Association. I do not know if the Attorney General had audience with the Law Association on this matter, but I do not think that we should be repeating errors if they exist. We should seek to correct those errors. Even though this is inserted, as you have correctly stated, in the Revised Treaty of Chaguaramas, the definition as : proposed in the treaty transported into this piece of legislation remains cumbersome, ambiguous, vague and too wide.

I would like to hear from the Attorney General as to what her position is as it relates to the Law Association of this country. The Law Association is a very powerful body and they are indicating to us that this definition needs to be revisited and I did not get from her what her position is on this matter. Because to simply say that it is contained in the Revised Treaty of Chaguaramas and therefore we have to go along with it even though it is cumbersome, it does not make sense to me. So I would like the Attorney General to really give us some comfort, because we would not be able to support the definition in its current form. We would like to support it, but we would like to get from the hon. Attorney General what is her position as it relates to the Law Association's submission to us which we shared with her.

Sen. Annisette-George: This definition of “Caricom National” has already been adopted in our domestic law, in Act No. 3 of 2005 which is the Caricom Single Market and Economy Act. It is also adopted in that Caribbean Community (Removal of Restrictions) Act. So that it is not an unknown term in our domestic law as it now stands. The fact that it is not, let us say, usual common language, as I said before it is not something that is unusual in legislation, and this is consistent with what is in the treaty. To now craft another definition would affect our compliance with the treaty. The whole reason for this amendment is for the compliance. The only answer, I think, to the concern that the Senator may have, would be for a revision of the treaty. But I am also mindful of when this treaty was executed.

Sen. Mark: In 2001.

Sen. Annisette-George: In 2001. And it would have had the benefit of luminaries on the other side who then sat on this side.

3.45 p.m.

Sometimes, we need to be mindful of tinkering with definitions, interpretations and legislation without considering the wider context. I submit that even though the definition may seem wide, it is wide for a specific purpose, to capture the domestic position of all 15 member states. While this amendment is not dealing with all 15 member states, I think that we would create greater mischief by defining “Caricom national” in one way in this piece of legislation which is totally different from what exists in the treaty.

Sen. Dr. Charles: Can I ask the Attorney General if she had discussions on the definition with the Law Association? As my colleague said, we would like to support the Bill because of its importance, but this particular matter caused us some concern. She can say what discussion she had and if there was a meeting of the minds or there was a different viewpoint. That will assist us in coming to our position.

Sen. Annisette-George: I had no discussion with the Law Association. I have seen that at some time prior there was communication between the then chairman of the Law Association and the Minister of Legal Affairs concerning the amendment and some concerns were raised. My recollection is that the last piece of correspondence I had seen in that exchange—I do not want to say settled the matter because it may mean that there was agreement. There was some resolve of the situation. It was as if the Law Association—I do not want to use the word “surrender”. I will be guided. I will agree to disagree. There has been exchange of communication. I do not have it here with me, but I have seen such.

Sen. Seetahal SC: The views of the Council. It will not be the Law Association. The Council of the Law Association could probably have been informed not with the consideration that this would have been part of the treaty.

Can the Attorney General tell us the definition of “Caricom national”? Has this been interpreted anywhere before by any court or arbitration panel, or whether or not that term has been interpreted in international law? Are you aware? I seem to remember the words, “a connection with a state which entitles a person to be regarded as belonging”.

If an occasion should arise to interpret the second definition of “national”, sometimes, resort has been made to *Hansard* which in this case will be what we are seeing now. If that is so, perhaps, our identification of what we mean by that phrase now may be helpful and may assuage some of the concerns of the Senators on the Opposition Benches.

Sen. Annisette-George: I have no knowledge of this term being interpreted anywhere before. I think that this is one of the concerns that the Council of the Law Association had raised in that this had not been interpreted before.

In terms of who will be captured by a definition like this, some of the categories of persons—we are told that this is intended to be totally comprehensive. It could be a resident or an ancestor who was a national of the country. From the definition when they say connection it is very wide. It could be somebody who could not claim citizenship or nationality, but had a sufficient nexus to the society to be covered by that clause.

Sen. Seetahal SC: There are three parts. It is a person having a connection which entitles that person to be regarded as belonging to the state. Perhaps, if I were living with a person from a Caricom country, even though I was from Ireland, if I lived with a Grenadian over a number of years that would be a connection which would entitle me “to be regarded as belonging to”. It would not be so vague and transient. I think that is the concern of the Senators.

The other one is being a native of the state or resident for immigration purposes. There are three subs and we need to ensure that they are not people who are passing through. At some stage it has to be clarified.

Sen. Drayton: By and large Sen. Seetahal SC raised the same issue that I had. The first part of clause (b) has a connection which entitles the person to be regarded as belonging to before. Is that directly subject to the immigration laws?

If you want to call that strained connection or nexus it will be in the context of how the relationship or status of the person is described in the Immigration Act. The first part must be read in conjunction with the Immigration Act. Is this so?

Sen. Annisette-George: That is so. The Immigration Act of each particular member state.

Sen. Drayton: That is not clear here. You have two separate criteria in the clause. The first part has a connection with the state and then it goes on to say, “if it be so expressed as being a native or resident”. The second part is subject to relating to the Immigration Act. In the first part you do not get that connection. While I understand that it is the language of the treaty and we have adopted it, some care needs to be taken. Maybe, there needs to be a preamble. Let it be more clearly within some other context.

Sen. Seetahal SC: I was of the impression that the part dealing with the purposes of the law thereof relating to immigration only referred to residents. From my knowledge of the Immigration Act, I do not think that the first part will apply.

If we go back we are saying that a Caricom national is either a citizen or person who has one of three things. The first is a connection which entitles him or her to be regarded as belonging to. The second one is, if it be so expressed as being a native. The third is a resident of the state for the purpose of the law relating to immigration.

My understanding of the immigration laws is that they deal with residency. I do not know that they deal with native or people belonging to. I thought that that qualification belongs only to resident status. If it does, everything needs to be clear, just as the previous Senator said.

Sen. Annisette-George: The qualification for the purposes relating to immigration qualifies each part of the definition.

Sen. Seetahal SC: There is nothing in the immigration law relating to native.

Sen. Annisette-George: Let us take “belonging to”. In the immigration law of Antigua and Barbuda, this definition “belonging to” will only refer to a citizen. They have a provision saying that. In Trinidad and Tobago we do not have that concept of belonging to. They borrowed parts of the various—and that makes it difficult to capture everybody. We do not have the status of belonging to. We have citizenship, citizenship by descent, residency or native. For the purpose of the law relating to immigration, we govern everything.

Sen. Seetahal SC: All three.

Sen. Annisette-George: All three.

Sen. Seetahal SC: If we say so here and we need to interpret it, the words of the person moving the Bill ought to be the determinant.

Sen. Drayton: “To be regarded as belonging to or”, it should not be “or” because all of it is subjected to immigration laws. It should be “and”.

Sen. Dr. Nanan: Could the Attorney General give us an idea of which Caribbean territories have passed this particular piece of legislation?

Sen. Annisette-George: I have been told that all the countries have passed the removal of restriction with respect to discriminatory practices that have been identified in their domestic law. Sen. Mark had asked the question. I tried to get it from the Caricom Secretariat. I have something that shows all the restrictions. There was a report on what they have removed. That restriction was identified in the law of your country. I have a table but it will not show the Legal Profession Act in the various countries because it may not have been identified as a restriction in a particular country. They may not have had a similar piece of legislation for their legal profession as we have.

In terms of using the definition of “Caricom national” for those who have enacted the Caricom Act which incorporates the treaty, in incorporating the treaty, Article 32 where the definition comes from would have been incorporated in their domestic law.

Mr. Chairman: Do you want to confer with your advisors or should I put the question?

Sen. Annisette-George: I will ask you to put the question.

Question put and agreed to.

Clause 2 ordered to stand part of the Bill.

Question put and agreed to, That the Bill be reported to the Senate.

4.00 p.m.

Senate resumed.

Bill reported without amendment.

Question put, That the Bill be now read a third time.

*Legal Profession (Amdt.) Bill**Tuesday, March 04, 2008*

The Senate divided: Ayes 24

AYES

Enill, Hon. C.

Saith, Hon. Dr. L.

Annisette-George, Hon. B.

Browne, Hon. M.

Manning, Hon. H.

Piggott, Hon. A.

Narace, Hon. J.

Gaynor Dick-Forde, Hon. Dr. E.

George, Hon. W.

Rogers, L.

Hadeed, G.

Lezama, Miss L.

Melville, Miss J.

Cummings, F.

Gayle, N.

Deosaran, Prof. R.

Seetahal SC, Miss D.

Ali, B.

Annisette, M.

Ramkhelawan, S.

Baptiste-Mc Knight, Mrs. C.

Nicholson-Alfred, Mrs. A.

Drayton, Mrs. H.

Merhair, Mrs. G.

The following Senators abstained: W. Mark, Dr. A. Nanan, Dr. C. Charles, Dr. J. Kernahan, C. D. Sharma, M. F. Rahman.

Question agreed to.

Bill accordingly read the third time and passed.

**BASEL CONVENTION (REGIONAL CENTRE FOR TRAINING
AND TECHNOLOGY TRANSFER) BILL**

Order for second reading read.

The Minister of Planning, Housing and the Environment (Sen. The Hon. Dr. Emily Gaynor Dick-Forde): Mr. President, I beg to move,

That a Bill to establish the Basel Convention Regional Centre for Training and Technology Transfer for the Caribbean Region in Trinidad and Tobago and for related matters; be now read a second time.

Mr. President, I wish now to provide a brief background to the matter to this honourable Senate. Trinidad and Tobago acceded to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal on February 18, 1994. This Convention is a global environmental treaty that regulates strictly the transboundary movements of hazardous waste and imposes obligations on parties to the Convention to ensure that such waste is managed, minimized and disposed of in an environmentally sound manner.

The Convention was developed in response to the significant threats posed to human health and the environment globally from the unregulated transportation of such waste, which include toxic, poisonous, explosive, corrosive and flammable materials. The parties to the Convention agreed to the establishment of Basel Convention Regional Centres to treat with matters relevant to the implementation of the Convention and to promote the environmentally sound management of hazardous and other waste in the countries they serve.

Currently there are regional centres around the world in countries such as Argentina, China, Egypt, El Salvador, Indonesia, Senegal, South Africa, Trinidad and Tobago and Uruguay. Trinidad and Tobago is a member of the recognized United Nations negotiating bloc of the group of Latin American and Caribbean countries. This wider region is currently served by three regional centres—the Basel Convention Regional Centre for the South American region in Buenos Aires, the Basel Convention Regional Centre for Central America and Mexico in San Salvador and the Basel Convention Regional Centre for the Caribbean Region here in Port of Spain. These three Regional Centres are further supported

Basel Convention Bill

[SEN. THE HON. DR. E. G. DICK-FORDE]

Tuesday, March 04, 2008

by the Basel Regional Co-ordinating Centre for Latin America and the Caribbean Region in Montevideo, Argentina.

Mr. President, regional centres are required to provide assistance to projects that would benefit the region they serve. They can also provide assistance to national projects by linking global, hazardous waste management obligations with national plans. Their core functions are quite varied and include the following:

- training through the development and conduct of specific programmes, workshops, seminars and related projects;
- technology transfers by identifying, developing and strengthening mechanisms for the transfer of technology;
- collection, assessment and dissemination of information in the field of hazardous waste; and
- provision of consultation services and advice to parties upon their request.

Mr. President, regional centres have been in existence for quite a number of years, including the centre in Trinidad and Tobago, which was established in 1998, as recorded in Decision 5/5 of the Fifth Meeting of the Conference of the Parties to the Basel Convention. However, subsequent to the establishment of the centre, the parties to the Convention recognized that legal personality was essential to the proper and effective functioning of the centres. Legislation to establish the centre would facilitate its access to funding from the Basel Secretariat so that it could fulfil its mandate.

Therefore, as recorded in Decision 6/3, the conference of the parties to the Basel Convention in December 2002 set out the core elements and functions of regional centres and required that Framework Agreements be executed between the Secretariat and the host countries of regional centres.

In this regard, after significant consultation among countries in the Caribbean Region and the Basel Secretariat, a Framework Agreement between Trinidad and Tobago and the Basel Secretariat was executed on October 29, 2004 for the establishment of a Basel Convention Regional Centre for Training and Technology Transfer for the Caribbean Region in Trinidad and Tobago.

Mr. President, Cabinet, in July 2004, agreed, on the advice of the Chief State Solicitor, that the Attorney General cause to be prepared the necessary legislation for the establishment in Trinidad and Tobago of a Basel Convention Centre. In this regard, the Office of the Chief Parliamentary Counsel forwarded draft

legislation to the then Ministry of Public Utilities and the Environment on November 23, 2006. That Ministry then submitted a draft Bill to the Basel Secretariat, which was approved and subsequently forwarded to members of the Caribbean region who had indicated in the framework agreement a willingness to be served by the centre. Receiving no request for amendment, the Bill is therefore ready to be tabled in Parliament.

Mr. President, I wish to indicate that the legislation before this Senate contains some of the salient provisions of the framework agreement that are required to be enacted. However, all of the provisions of the framework agreement are binding and would be adhered to in all circumstances. Indeed, the framework agreement is appended to the Bill.

It is against this background that I now address the provisions of the Bill before this honourable Senate. It is set out in four parts and two schedules. Part I deals with preliminary issues such as the short title and relevant definitions for the interpretation of the Bill. Part II addresses the establishment of a regional centre. Clause 3 of the Bill, in Part II, seeks to establish as a body corporate the Basel Convention Regional Centre for Training and Technology Transfer for the Caribbean Region.

Clause 4 sets out its functions, which include the core functions of training, technology transfer, information gathering, assessment and dissemination, consultation and awareness promotion. The appointment and responsibilities of a director of the centre and the appointment of national and international staff, consultants and experts of the centre are addressed in clauses 5 and 6. It is crucial to note that the centre's activities and functions will be supervised by a steering committee as required by the framework agreement.

Part III of the Bill, which includes clauses 7 to 11, addresses the establishment of nomination, election and other relevant issues concerning the steering committee. This committee will be constituted by representatives of the Caribbean region, who will be served by the centre. In this regard, Annex III of the framework agreement, which itself is appended to the Bill as the First Schedule and further the Second Schedule to the Bill, sets out those countries in the Caribbean Region which have consented to be served by the Regional Centre in Trinidad and Tobago. These countries are: Antigua and Barbuda, Commonwealth of the Bahamas, Barbados, Belize, the Republic of Cuba, the Commonwealth of Dominica, the Dominican Republic, the Republic of Guyana, Jamaica, the Republic of Trinidad and Tobago, the Federation of St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines.

Clauses 12 to 17 of Part IV of the Bill address all issues that require legislative force, such as financial management, funds and resources, reporting by the regional centre to both the Basel Secretariat and the Government of the Republic of Trinidad and Tobago. These clauses also speak to the audit of the centre by an independent auditor.

Of significance, is clause 13 which provides for the centre to keep separate accounts for funds and resources received from the trust funds or external sources and those received from the Government of Trinidad and Tobago. This feature of the Bill that relates to the financial management of the centre is important since, as the host country, Trinidad and Tobago will be responsible for the provision of an agreed budget to the centre as stipulated in Annex II of the framework agreement, which, as stated before is appended as the First Schedule to the Bill. The funds provided by the host country would cover the cost for office accommodation and salaries of essential staff. The Basel Secretariat, on the other hand, would be responsible for the provision of funds for regional projects and research and other core functions of the centre. Sound governance over the financial management of the centre is a fundamental reason for this legislation.

Mr. President, the benefits of hosting this regional centre in Trinidad and Tobago are innumerable. In the spirit of international cooperation and responsibility required under international law in general, and the Rio Declaration in 1992 in particular, Trinidad and Tobago, as an industrialized developing country, is ensuring that it provides as much support to its neighbours under the Basel Convention.

4.15 p.m.

Additionally, it is important to ensure that there is a robust support system for small island developing states such as those within our region, so as to afford us as much protection as possible, against activities of larger nations, particularly on the issue of transboundary shipment of hazardous waste.

Nationally, expertise will be available to guide Trinidad and Tobago through the process of ensuring that we adhere to our obligations under the Basel Convention and would also provide us with advice and assistance in best practice in hazardous waste management.

Mr. President, in the light of the foregoing, I have the honour to recommend the consideration of this Bill to establish the Basel Convention Regional Centre for Training and Technology Transfer for the Caribbean Region in Trinidad and Tobago, by this honourable Senate.

Mr. President, I beg to move.

Question proposed.

Sen. Dr. Adesh Nanan: Thank you, Mr. President. The Basel Convention speaks about the control of transboundary movement of hazardous waste. We have to ask the question, in terms of environmental management: What is happening under the present Government? How can you adhere to the Basel Convention, when the EMA is a total failure? We have seen that with respect to the Environmental Management Authority and their performance to date.

I would go to the different parts with respect to the environment because they are all linked. We are dealing with hazardous waste under the Basel Convention. The Basel Convention also speaks to other wastes. As I make my contribution as the alternative government, I want to start off by calling on the national community to start recycling. We have seen in other European countries such as Germany, where it has been very successfully done.

It is a sad situation when we have to rely on authority. The Bill speaks to the setting up of a regional centre being staffed by nationals. We have seen the Environmental Management Authority's role in rubber-stamping decisions taken by the Government. We have seen it with the aluminium smelter. You will recall that it was the UNC administration that gave that toothless bulldog, the EMA, teeth. What has happened today is that the EMA has failed to produce the rules and regulations. The Environmental Management Authority, under the Environmental Management Act, is supposed to draft rules and regulations to be brought before the Parliament by the Attorney General. I do not know if the Attorney General is aware, but the Environmental Management Authority has so far brought only water pollution rules to the Parliament. Where are the air pollution rules for gaseous emissions and where are the oily and hazardous waste rules? We are dealing with hazardous waste.

A main part of this Convention, the Minister is probably not aware, is how you minimize the hazardous waste within your own state. We are in a situation now, as we deal with this Convention, where it has given the Opposition the opportunity in this Convention to show the state of the environment under the present administration and their failure in environmental sustainability. When we go on the beaches, from time to time, we see the Government doing some clean-up. There should be a complete maintenance programme, designed to upkeep our beaches free of litter. That is one area, in terms of waste.

I will deal with the Ministry of Health, because the Basel Convention talks about waste from hospitals and other facilities. I will deal with almost all the Ministries in my contribution. I will deal with the Ministry of Tourism, because I heard the Minister of Tourism speaking in the other place and beating his chest for certain reasons. I will deal with the particular area of tourism.

The aluminium smelter is what I want to base my contribution on, in terms of the failure of the Government. The Opposition told the Government that they should not build the aluminium smelter. We gave them the reasons. It is the transboundary movement of hazardous waste. We have a situation with the aluminium smelter where, in six or seven years, we will have to get rid of those potliners that contain fluoride compounds and cyanide. That is a poisonous chemical.

This particular Convention would have to be utilized. I am quite sure. It should be part of the certificate of environmental clearance given to Alutrint. The certificate of environmental clearance should say that as part of the Basel Convention that will be the mechanism, so that these potliners will leave Trinidad and go to another country where it can be properly disposed of. I do not know if that is the situation there. As I speak of potliners, sodium fluoride, the chemical breakdown of the fluoride products and cyanide, we have to face the fact that we are dealing with hazardous waste.

Under the Basel Convention, Annexes I, II and III—inorganic fluoride is a major danger, in terms of hazardous waste. We have pointed that out to the Government. We said that the amount of hydrogen fluoride that will be coming from the aluminium smelter will be detrimental to the society. We said that hydrogen fluoride is a very corrosive gas. Hydrogen fluoride is what is used to etch glass. That is a very dangerous chemical. Hydrogen fluoride, in the presence of steam and water, could be explosive. Hydrogen fluoride gas, when it enters the lungs, could destroy them. Workers are at risk. We told the Government about the dangers of hydrogen fluoride—an inorganic fluoride, a hazardous waste—but they paid no attention. We told them about the situation with benzene compounds and the dangers of benzene, which is another hazardous waste product. I could go on. I will go on because it is important.

Sen. Dr. Dick-Forde: On a point of order.

Sen. Dr. A. Nanan: What is that point of order?

Sen. Dr. Dick-Forde: The same Standing Order 35(1). This Bill deals with the establishment, which is giving legal personality to the Basel Convention

Regional Centre for the Caribbean Region in Trinidad and Tobago. Despite the wide explanation by the Senator, what he is talking about has nothing to do with establishing the centre.

Sen. Mark: Hazardous waste.

Mr. President: Minister, I am close to where you are, but I was looking at the Bill. I share your concern as to whether or not he was dealing with the Bill. Part of it deals with raising the awareness, in terms of pollution. Therefore, a discussion of that is not entirely inappropriate. However, Senator, I give you a margin of latitude, but do not stray too far for me, please.

Sen. Dr. A. Nanan: Mr. President, I cannot understand how a Minister of the Environment could come in this Senate and cannot see the linkage between this particular Bill before the Senate and the environment. You have to be totally blindfolded over there. You should not be in that office at all. You should be the first one to be reshuffled with your performance in this Senate—totally unaware.

Mr. President, that Basel Convention Regional Centre that the Minister talked about being a convention centre, is not a convention centre. We are dealing with a regional centre. We are not dealing with the PNM Convention Centre, in case you did not know. The Minister probably is not aware but, they are renting the compound in Macoya from CARIRI. You are probably not aware of that. I did not want to get into that debate. I will get into it because the Minister must be aware.

The Basel Convention Secretariat reports to the Minister. She is not aware that they are reporting to her. I do not want to go there but she wants me to go there and I will go there. This thing is functioning, in case you did not know Minister. It is functioning. The only difference is that you are going to pay people to work. That is the difference here. People are being paid. She is not aware. You have come with a Bill and you do not know. You are reading from a script in the Senate. *[Interruption]* I will not give way. Call another Standing Order.

Sen. Dr. Dick-Forde: You are not making sense. I was trying to help you.

Sen. Dr. A. Nanan: I am speaking about chemicals that will destroy society and you are talking about relevance to the Bill. You need to go back and read the Convention. Apparently you are not aware. When I was the Minister of the Environment this was a main—do not come and tell me that this thing is not related to the environment. This is a matter—We are dealing with the disposal of batteries and lead. Are you aware of that?

Mr. President: Senator, what is not up for debate is whether the Minister was right or wrong. What is only up for debate is the Bill in front of us. Therefore, I ask you to confine your comments to the Bill.

Sen. Dr. A. Nanan: Thank you, Mr. President. I was dealing with hydrogen fluoride. The reason I was dealing with hydrogen fluoride is that inorganic fluoride and hydrogen fluoride, in small quantities, could be used. In one part per million, hydrogen fluoride is very beneficial to strengthening enamel and dentine in the teeth, but over 13 parts per million, it can be dangerous. On one hand you have hydrogen fluoride, which can be useful and on the other hand, in the larger quantities, it has a detrimental effect. What we are setting up here is a regional centre to deal and transfer technology, because the Bill talks about the transfer of technology. I hope that, with this transfer of technology, the Government will be able to manage the hazardous waste, because to date, the Government has failed, in terms of management of waste on the whole. Whether it is at the Beetham Landfill or the Forres Park Landfill, we have a situation where there is no national solid waste management plan. There is no plan for disposal of waste, whether it comes from the medical environment or other areas. We see a Bill before us where the director will be reporting to the Minister—*[Interruption]*

Sen. Mark: Which is unusual.

Sen. Dr. A. Nanan:—which is unusual, because the Environmental Management Authority is supposed to be an independent authority. We have seen from their performance that they are not independent. They are rubber-stamping all the decisions made by the Government.

Mr. President: Senators, it is now 4.30 p.m. I think we will take the tea break. We will suspend until 5.00 p.m.

4.30 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

Sen. Dr. A. Nanan: Mr. President, thank you. Before the tea break, I was showing the link between the regional centre and environmental management. I wanted to put in context, when I spoke of the rental of facilities from Caribbean Industrial Research Institute (CARIRI), the Basel Convention Secretariat.

In preparation for the debate, I wanted to see what the focal point for the regional centre is. So, I went on the website for the Basel Convention, and I saw the Environmental Management Authority (EMA) was the focal point for the Basel Convention Regional Centre. That is the link. In all areas, we have seen how the EMA has operated in terms of environmental management.

If the focal point is a non-functioning EMA, how can we have any confidence in this Basel Convention Regional Centre? Questions will be asked in terms of the transboundary movement of hazardous waste, especially from the aluminium smelter. In the context of the Caribbean region and the movement of the potliners from the smelter to another destination, would the regional centre be rubber-stamping this particular movement of this hazardous waste?

The Environmental Management Authority was set up by the Environmental Management Act. There is also the Environmental Commission that is the superior court of record where you can have a class action suit or representation by private parties to the Environmental Commission. Under the present Government, we have seen suppression of all avenues of redress by citizens.

The Environmental Management Authority, under the Environmental Management Act—with respect to the noise pollution rules and the water pollution rules, the water pollution rules were laid in Parliament, but there is supposed to be a national pollutant register, and the question is: has this national pollutant register been documented? Is there an existing national pollutant register? The Minister must say whether there is a national pollutant register.

This Convention really came about because Basel is in Switzerland on the River Rhine, and there are a lot of chemical and pharmaceutical industries there. What the Convention and this framework agreement really deal with is human health and sound environmental management. How can we have sound environmental management when we are unleashing on the population this kind of disaster in the La Brea area that can have serious repercussions?

Mr. President, if there are no rules and regulations to govern any company that wants to come here and operate an industry, then there is no obligation by a company, because there are no rules. If you are saying that you do not have rules and regulations in place—

Mr. President: Right where you are going is not where you started. When you started, and the Minister interrupted, you were making a case for the Bill, and you were indicating that because of the state of the environment this Bill is necessary. You have gone off on that and now you are talking about whether there are rules or no rules by the EMA. I think that is straying a little too far from the context of what the Bill is. I would like you to try and focus on the Bill.

Sen. Dr. A Nanan: Mr. President, I am not wavering, but I am putting this in the context of yes, the Basel Regional Convention Centre is a good thing, but the focal point is the EMA, and the EMA is a non-performing authority. If the EMA is a

Basel Convention Bill
[SEN. DR. NANAN]

Tuesday, March 04, 2008

non-performing authority—yes, the Basel Convention Centre is a good thing, but the focal point is the EMA. What confidence can we have in a regional centre? In fact, the country is being represented by the EMA as the focal point. That is the distinction between wavering and supporting the Bill and giving the view with respect to the EMA's non-performance.

Mr. President: The EMA is not part of this discussion. There is a general nexus, but it is really not part of this Bill and, therefore, we really need to hear you talk about the Bill.

Sen. Dr. A. Nanan: The framework agreement is based on the Basel Convention. The Basel Convention deals with hazardous waste. Annex I, II and III of the Basel Convention deal with all the various chemicals and by-products of chemicals that form hazardous waste.

This framework agreement allows for the cooperation between parties to transfer technology to minimize waste produced in the state itself with respect to the reduction of waste in a state, and best practices in other countries can be transferred here. So, we have failed in waste management. That is a fact! We have failed in waste management in terms of the Government.

Mr. President, as I said, there is no national solid waste management plan. Part of the management of hazardous waste has to deal with landfills and how you operate on a day-to-day basis. That is why I talked about promoting recycling. That is one way of reducing waste on the whole. So, the framework agreement that is in this Bill—the nexus is sound environmental management, preservation of human health and reduction of hazardous waste and other waste. That is the main part of this Bill.

The rest of this Bill is really the setting up of the regional centre which deals with the staffing, and the Minister appoints the director of the regional centre. That is another anomaly. A certain proportion of the staff is also appointed by the Minister. Yes, we have a steering committee made up of experts within the region, but that direct control, on this particular centre—the director is reporting directly to the Minister—leaves some kind of grey area there. That is where the debate is.

So, if you are saying that you are going to appoint a director and you have control, that is the same thing with the EMA, and that is why I went there. You have appointed your independent authority and that particular agency or authority is being railroaded by the Government. Certainly, when we come to other issues dealing with this particular Convention and movement of hazardous waste, we are

going to see where this particular director cannot be an independent individual if he has to answer to the Minister. That is one area in this particular Bill, and the other area has to do with funding as the Minister said, and that is why this particular legislative approach is being taken.

When one looks at the whole Basel Convention and the various articles, this did not happen overnight. This happened with the United Nations Charter on nature. There was also the Stockholm Convention with respect to the United Nations and the Cairo Guidelines and Principles. All of that was part of this particular Convention, and then the Basel Convention came about. There can be a link between this Basel Convention and the Kyoto Protocol with respect to carbon dioxide emissions. So, all those linkages can be made.

So, when your Prime Minister came back from Uganda and was talking about climate change and global warming, all of that could be linked to this particular debate, because the Kyoto Protocol is important. We are one of the main producers of carbon dioxide at the Point Lisas Estate. With respect to this new smelter, we are going to have tons of carbon dioxide that we need to get rid of. So, all those things can be part of the debate, but I want to stay within the focus of hazardous waste.

Recently we were in a situation where arsenic was being used as a treatment on the T&TEC poles, and that was leaching into the environment. We need to be very careful. That is why this particular management of hazardous waste takes us throughout all areas—from the disposal of lead batteries to the disposal of computers and computer equipment.

Mr. President, even the solution that we use for film development can be hazardous and even by-products of dyes. We have to consider our industries. There are so many industries with by-products of which the wastes are harmful. We have mercury being poured into the Gulf of Paria, and mercury is one of the annexes to the Convention. All of those are part of the agreement—whether you are transporting your waste across borders or whether you are minimizing it within your own state.

Now, if you have to minimize it within your own state, I should think that you would have this regional centre that would have the cooperation between parties, because there are so many various countries that are being represented by one regional centre. If I recall, Argentina is responsible for a certain area of South America and we have one in Nigeria and other areas that represent a certain

Basel Convention Bill
[SEN. DR. NANAN]

Tuesday, March 04, 2008

number of countries. We are fortunate that we are going to have our regional centre here. The UNC administration had pushed that forward—having the regional centre operating in Trinidad and Tobago.

We are here with a framework document with respect to this Convention, and there are certain questions that must be asked. Is the Government really serious about environmental management? You would recall that there was a Shipping Bill that dealt with marine pollution. That Bill went to a joint select committee, and it never saw the light of day. In the debate it was so important with respect to dealing with marine pollution and how ships dispose of waste and that has never come forward. So, when we question the Government in terms of its performance in sound management practices that is the main reason we have very little confidence in the operation of this regional centre under the present Government.

If you looked at the track records in terms of performance, you would have seen that the EMA was given all the necessary tools with respect to noise pollution. There was a Certificate of Environmental Clearance Rules. All that was given was brought to Parliament and passed. There was the Environmental Sensitive Species that set up the various—and then you have the sensitive areas with respect to national parks and Matura.

5.15 p.m.

All of that in terms of track record and performance of environmental management you could have seen the trust there, but under the present administration we have seen certificates of environmental clearance being given by the EMA to companies; there are no rules and regulations in place to set any standards in this country.

So, whether you are setting up a regional centre for the benefit of the Caribbean and you are housing it here, it is a good thing. I am saying it is a good thing that we are the regional centre, but in terms of performance of the Government, we have to ask several questions. We have to keep our eyes on the Government to ensure that this particular centre becomes a success, because you are going to have that situation where operating out of—

You know, Mr. President, they are on the CARIRI compound renting from CARIRI and at the same time there are rumours that CARIRI is going to be subsumed under UTT. So, the question is: Who is in charge? Is it a matter of control; is it a control freak to bring everything under one person's control? Because the chairman of CARIRI is also on the board of UTT, so questions must be asked. When this particular framework is before the Parliament, the debate can go as wide as possible, within your control, Mr. President.

Another area I want to deal with and it has to do with the various by-products of the industry in terms of treatment of wood and wood products, because there are serious by-products of the resins that can be harmful. It can be harmful to the workers and citizens, as a whole, in terms of leaching into the soil. From the other prospective, the use of fertilizers and pesticides. Again, that is part of the Convention to reduce these hazardous wastes within the State.

What controls are there? The regulations were passed with respect to pesticides, but we do not know; we are not aware; we have no sense of the Government's urgency of actually managing the environment. We are seeing industrialization at its peak and we are seeing destruction of the environment. We have to ask the question. How many hectares of land are available for reforestation and agriculture on footers of the Northern Range? Very little. Our prime agricultural land is being used up. So, we are going to run into a situation where prime agricultural land will not be available when we need it most to produce food.

That is the situation with respect to the sound management of environmental practices. Because you have one area where you need to manage the environment, and when you are dealing with the management of the environment you are also dealing with all the other aspects or satellites from the main area of the Environmental Management Authority. You have to look at the Ramsar sites. You do not want to use your hazardous waste and destroy the Nariva Swamp or the Caroni Swamp. You have to manage the environment in such a way that you preserve these sensitive species.

The regulations are in place with respect to sensitive species, but in terms of hazardous waste, penetration into these sensitive areas there is no control; there is nobody watching, or taking records, or no measurements being made anywhere with respect to preservation of these Ramsar sites. Even our coral reefs are being threatened by oily and hazardous waste and nobody is monitoring the oily waste from the service station. It is just going down in the various drains, and it is a major source of hazardous waste.

Part of the Convention also deals with oily waste. So the linkage is showing that in terms of the situation with the environment and hazardous waste, there is no real authority that can say yes, we are adhering to the Convention; we have acceded to the Convention; we are bringing legal documentation to have a regional centre but there is no real work done to support being part of the Convention in terms of managing our hazardous waste.

Basel Convention Bill
[SEN. DR. NANAN]

Tuesday, March 04, 2008

In the hospital environment, that is another situation that is developing in terms of the incineration of needles and from time to time there are many needles being exposed on various beaches. So, what is the Minister of Health doing? In fact, that is the reason why you have this debate taking place. It is supposed to be a coordinated effort; that is the role of the EMA also. To coordinate all the activities of the various arms of the State for management of the environment.

Town and Country Planning is another player in this whole exercise. The Ministry of Health has to have a plan to work together with the EMA; the Ministry of Local Government also has to be involved in the disposal of waste in the various municipalities. The Ministry of Tourism is also another player in this game, because if we do not manage the environment properly, then our tourist attractions will be affected. Our beaches will no longer be attractive. Tobago's beaches are rated some of the best beaches in the world.

In fact, if I recall in Maracas, they were finding a certain amount of bacteria in the water. That is the situation we are faced with, environmental management. We need to go around the country and actually play a role in keeping our environment managed properly. This Basel Convention, if we are really serious can be the beacon for proper environmental management, because it gives us an opportunity now to call upon the EMA as the supposed focal point, to act decisively; to work with the agencies like the Solid Waste Management Company; to work with all the other arms, to make a difference. Call upon all these various agencies to come together for the benefit of Trinidad and Tobago. Not for the benefit of the Opposition, for the benefit of the country, because many cruise ships pull up into Port of Spain and the appearance of the city on that particular day, we have garbage in various areas. That is not a good appearance for a country. When these first-time visitors come here on these cruise ships—and this particular exercise is an opportunity for long-stay visitors—they will have an opportunity to utilize the first visit and say yes, I want to come back for a longer period. This country is very attractive.

Look at Dominica, you can drink the water in the rivers. *[Interruption]* I do not know if you can do it in Barbados, Minister in the Ministry of Finance.

Sen. Mark: "Nah, you can't drink water in the river in no Barbados."

Sen. Browne: There are no rivers in Barbados.

Sen. Mark: "There are no rivers. It's true. It's true."

Sen. Dr. A. Nanan: Mr. President, the point I am making in terms of environmental management; that is the situation in Dominica. In terms of water pollution, how many of us pass along the bus route, even on the Beetham and see this blue water along the Beetham.

Mr. President: Senator, you have to excuse me, but you are back to making a case for the centre. Having made it, I think you should move on from that point. Having indicated there is a need in the environment for this kind of facility now we can talk about the Bill itself or something close to the Bill. At this point, you are just repeating the case that you made before the tea break.

Sen. Dr. A. Nanan: Thank you, Mr. President. I have copious notes, but I do not want to go to them, but since you are directing me that way I would have to go to my notes. I will go to the Bill, clause by clause, because I need to deal with some issues. I want to deal with the international staff of the centre. The Bill talks about:

"'international staff of the Centre' means officials of the Centre whose posts are financed from the Basel Convention Trust Funds in accordance with decisions of the Contracting Parties to the Basel Convention, and who are appointed by the Director, in consultation with the Secretariat."

We want to find out what is the salary of the director of this particular regional centre. I am sure the Minister is aware. We also want to know how will this director be chosen. The Bill does not say or give any direction with respect to how the director will be chosen. We do not want it to be a PNM party member; we want it to be fair and transparent, because we are dealing with an international convention, which is the Basel Convention.

The Minister talks about trust funds and the access to trust funds. We have to ask the Minister: How much money has the Basel Convention Secretariat accumulated over the period of which they have been established? Because the Minister said that the only way that we could access the trust fund or more money is through the legislation required. We want to know how much money the Basel Convention accumulated over the period of its existence.

We also want to know about the Technical Cooperation Unit. We want to know how much technical cooperation or what were the programmes in place. If you go to other regional centres you would see them operating; you would see them having training programmes in place for disposal of a hazardous waste. What has happened?

Basel Convention Bill
[SEN. DR. NANAN]

Tuesday, March 04, 2008

Tell us what has happened from 2002 to present with respect to the Basel Convention Regional Centre. How many programmes with respect to management and hazardous waste. We also want to know what is the current staffing of the Unit. Is there only a director? Is there a structure presently that is reporting to the Basel Secretariat? Is there a public education programme in terms of the Basel Convention and the accession to the Basel Convention and the benefits of a regional centre? Because the only difference here is that you are putting it into a legal framework.

5.30 p.m.

Collecting information on new or proven environmentally sound technologies, and knowhow relating to—how have you benefited, Minister, in terms of environmentally sound management practices? How have we been able to utilize these environmentally sound management practices to minimize the generation of hazardous waste? What meetings have been organized? What is the relationship between this regional centre and other parties? Have we been able to utilize the best practices from other parties in terms of waste management? This also leads me to a visit to Montreal, where there was a situation where we had an opportunity, as Ministers of the Environment, to actually interact with each other in terms of the management of the environment. Has that director and staff been able to have that kind of exchange relationship?

Mr. President: Hon. Senators, the speaking time of the hon. Senator has expired.

Motion made, That the hon. Senator's speaking time be extended by 15 minutes. [*Sen. W. Mark*]

Question put and agreed to.

ADJOURNMENT

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, I beg to move that the Senate do now adjourn to Tuesday, March 11, 2008 at 1.30 p.m., when we will discuss the continuation of this Bill, and time permitting we would do Bill No 2. under Government Business on the agenda.

Mr. President: Hon. Senators, I have given leave for two matters to be raised on the adjournment. Sen. Dr. Kernahan.

Petroleum Products
Removal or Reduction of Government Subsidy
(Implications of)

Sen. Dr. Jennifer Kernahan: Thank you, Mr. President. I rise to raise the matter on the Motion for the Adjournment of the Senate: The failure of the Government to provide the population with a study of the full political, social and economic implications involved in any proposed removal or reduction of Government subsidy for petroleum and petroleum products

The issue of a proposed increase in fuel prices has been raised by two senior Government Ministers. In the *Express*, January 21, 2008 the headline was, “Govt’s \$2b dilemma, Improve water supply or maintain cheap gas?” and in the *Express*, Sunday, January 20, 2008 the headline was, “Time to reconsider \$2b fuel subsidy, says Rowley”.

Mr. President, this is cause for serious concern, especially among the middle and low income earners in our society as to how this will affect us. In developed countries where good governance and democracy are taken seriously and demanded by the people, major policy shifts are usually preceded by extensive research and discussion among the stakeholders, especially with people who are going to be most affected by the shift in policy.

If we in Trinidad and Tobago aspire to the highest levels of democratic tradition, it can be no different for us. We must demand of this Government that they be entirely forthright, transparent and tell us how this change in policy will affect the national interest and how it will affect sectorial interest. Bring the information to the Table and tell us if these interests can be reconciled, and if not, what are the options, and allow us to weigh the pros and cons and decide then if there are sacrifices involved, if they are worth the sacrifices because of the projected gains that would be achieved.

I would expect this Government in making such serious policy changes also to tell us what mitigation measures that they are going to put in place to help the people who are going to be most vulnerable to an increase in fuel prices. As far as we are concerned, this is not good governance to just jump up one morning and decide that you are going to introduce radical changes without telling us these things.

First, I would have expected the Minister in presenting rationale for this proposal—I would expect him to say this afternoon, what were the Government's socio-political objectives in the first place when these subsidies were introduced,

Petroleum Products
[SEN. DR. KERNAHAN]

Tuesday, March 04, 2008

and then to say what has changed to allow the Government to come to the conclusion that they should abandon these socio-political objectives. Then I would expect the Minister to tell us what are the projected costs primarily to the middle and low income earners of the proposed removal of the subsidy, in terms of the cost of transportation, the cost of living, the effects on inflation on the erosion of income and what is the social cost, especially in the depressed areas; the social cost to single parents, single mothers, children, elderly, people on fixed incomes and pensioners. We have to have an idea of what social cost this policy shift will entail.

Mr. President, it is a fact that the astronomical rise in the price of crude oil recently, even with the subsidy, has hit the population hard, because we have a situation—and it was outlined in a *Newsday* article on Tuesday, February 19, 2008—that apart from the fact that increased oil prices mean accrued income to Government, the effects on ordinary people are dire. And some of these effects mentioned in this article were the question of imported inflation, therefore you have an increase in the cost of goods and services; erosion of wages and salaries; increased cost of manufactured goods for export, that means you have less competitiveness and increased unemployment in the society.

The fact that oil prices have increased to the levels that they have—we have had oil prices just recently over \$103 a barrel—we, the middle and lower income persons are already reeling under the effects of that in our everyday lives. In fact, the Governor of the Central Bank has said on Tuesday, February 26, 2008:

“...T&T is experiencing symptoms of ‘Dutch Disease’ as the country's inflation jumped back to 10 per cent, a high recorded in October 2006.”

And he mentioned the symptoms:

“Rising inflation;

An appreciation of the real exchange rate;

A shift from goods-producing to service-producing sectors which contribute less to growth and sustainability; and

A slow-down in non-energy export growth...”

This is the Governor of the Central Bank speaking. And that translates into very hard times for ordinary people.

It is interesting that at the same time that we are being told that the Government is considering removing the fuel subsidy, we are informed that in the light of the rapidly dwindling known crude oil reserves, the Government has had

to increase allowances to multinational oil companies operating here in an effort to encourage much needed exploration activities. So, mitigation and subsidies are issues when this Government is in dialogue with the powerful multinational oil companies. Therefore we demand that mitigation and subsidies have to be issues when you are talking about the livelihood, the welfare and the well-being of the people of this country.

The Minister of Trade and Industry was reported on Sunday, February 20, 2008, and I quote:

“Subsidizing transportation to the extent that nobody considers fuel cost when you plan a trip to go anywhere in this country...”

Therefore—“the time has now come for the Government to consider whether it should be spending this much money subsidizing the price of gasoline and diesel.”

Mr. President, we on this side think that indeed, the time has come for this Government to consider a more holistic approach to this question and implement policy that would not exacerbate the already untenable position of the most vulnerable sectors. To make this point I would rely on some of the arguments raised by Todd Littman of the Victoria Transport Policy Institute in a document dated January 08, 2008 and it is called, “Appropriate response to rising fuel prices.”

Mr. President, I have to assume at this point that chief among the reasons for the subsidy in the first instance would be consumer affordability and the need to cushion the cost of living and the cost of transport especially for the poorest and the lower income. But Todd Littman argues that consumers and businesses are in fact affected by what he has called total fuel cost, and the Minister of Trade and Industry in his article referred also to fuel cost. Todd Littman said that the annual fuel cost is a function of the fuel price, fuel economy and annual mileage. So that clearly the price of fuel is not the only factor that impacts on consumer affordability. The issue of the annual mileage that each person has to drive every year and the fuel economy of the vehicles that we drive are also important in terms of total fuel cost. Littman argues that improving vehicle fuel economy and reducing per capita vehicle travel can protect consumers and the economy from rising fuel prices. He went on to make the point that the policies with respect to fuel prices represent true economy when they increase the overall efficiency and help solve the multiple problems that you have with respect to the number of cars on the roads, mileage, cost of fuel and so on. There are other responses that represent false economy because they increase the total cost and exacerbate other problems.

Based on that analysis, I am saying that this Government is guilty of false economy when they say that one of the issues that they are going to look at is removing the subsidy and in effect increasing fuel prices in the absence of other policy initiatives which are just as important. We need in this country to reduce the high levels of per capita travel that our citizens are forced into because there are no alternatives. There is no public transport, there are no alternative means of getting around, and the Government's present policy on land use and location and housing settlement is exacerbating that problem. Because what you have is people at this point in time being removed wholesale by the same Minister of Trade and Industry who spoke about the need to remove fuel subsidies; people are being removed from areas in Port of Spain, Cocorite, Malick, Bagatelle and so on to regions in the Central and South and these people have no alternatives in terms of public transport. So that means everybody now will be looking for private means of transport, increasing the mileage and increasing the cost of travel to people. And we have to remember that this Government's historic policy on transport has brought us to the point where mass transport by bus, by rail and so on in towns and countries are abolished.

5.45 p.m.

Mr. President, when I was growing up in Gonzales, there were bus services in Belmont, Gonzales, Carenage and in all the suburban areas of Port of Spain. There was a bus service that people could have accessed to go about their business, and therefore, the scenario that we have on the roads now did not apply. The scenario now with respect to government's policy, is that they are centralizing government buildings, government services and so on in Port of Spain. So while you are centralizing all these services in Port of Spain, you are moving people out of Port of Spain and you are carrying them to Central and South, and therefore, you are exacerbating the problem of transport, of increased mileage and of increased fuel cost.

Mr. President, this is not a fuel efficient economy and because of the annual miles that we have to travel, we have no choice. There is nowhere in Arima that I can leave my car and take a bus or a maxi to Port of Spain. You cannot leave your car by the side of the road. They have provided no infrastructure and they have brought us to the point where they brought in maxi taxis and private transport; they abolished public transport and they are telling us now they are going to remove subsidies on fuel, when they forced people to buy cars because that is the only way you can get around. Totally contradictory, they have no sense of where they are going or what they want to do.

They are relating that now to water and they want to take this \$2 billion and put it in water; provision of water for people, but my old Latin teacher would have called that a non sequitur. It does not follow; one has nothing to do with the other. Do you know why it does not follow? Because when my mother lived in Gonzalez there was very little water in the taps. When I grew up, the second generation, very little water. I have grandchildren now and very little water. When I go to Gonzales there is very little water, so this Government was never concerned about providing water for people. They never provided water. Two oil booms have passed through this country and Gonzales still does not have water, La Brea still does not have water, Chatham never had water.

The problem with this Government now, they have to find hundreds of millions of barrels of water for ESSAR, for ALCOA and for Alutrint. While many people in the south-west peninsula, including La Brea, go without water for days, the Alutrint Smelter is expected to use 2,444 metric cubes of water per day and the Government has to find that water. That is why they are so interested now in removing the subsidy putting it in water because they have to source it for the multinationals. This is not about us. This is false economy; this will cause hardship to our people and we totally demand that the Government rethink this policy. [*Desk thumping*]

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, the matter raised, is the failure of the Government to provide the population with a study of the full political, social and economic implications involved in any proposed removal or reduction of Government's subsidy for petroleum and the petroleum products.

Mr. President, as you know, under the Petroleum Production Levy and Subsidy Act 1974, the Government of Trinidad and Tobago since 1974 has been subsidizing the price of petroleum and petroleum products on the local market. This subsidy provides relief to consumers purchasing a wide range of petroleum products, including gasoline, kerosene and diesel.

When this subsidy was first introduced, the intention was to insulate the public from a sharp increase in petroleum prices, and to pass on directly the benefits from the oil windfall, through low and stable prices. While we agree on the need to share the oil dividend with the citizens of Trinidad and Tobago, it is important that we take the necessary steps to ensure that the oil wealth is shared in a more equitable manner. We must recognize from the outset, that our oil and gas are scarce resources and that ultimately, we would have to ensure that they are utilized as efficiently as possible to enhance our economic development and to meet our social needs.

The current subsidy is not targeted, and therefore, benefits disproportionately those who can most afford to pay, rather than those who are most in need. To highlight this point, we can note that the larger the size of your car or the more cars you own, the greater will be the benefit from subsidy. The motor car owner receives a much greater benefit than that received by the travelling public, through the level of taxi fares.

Mr. President, over the last five years, total petroleum subsidies won by the Government, have increased as a percentage of current government expenditure from 1.6 per cent in fiscal 2002/2003 to 3.4 per cent in fiscal 2006/2007. Indeed, in 2006/2007, the Government provided the motoring public with a subsidy, the equivalent of \$1.25 per litre. This is so in part because of the increase in the international price of oil, as well as higher demand for a larger number of vehicles. The price of gas is an important influence on the demand for motor vehicles, which in turn contributes to significant bottlenecks on our roads and impacts on our overall productivity and economic deficiency.

We need to recognize that international oil prices are hovering around US \$100 per barrel, substantially more than the oil price of \$9.80 per barrel when the subsidy was first introduced. Just as it is in a country's interest to judiciously exploit its oil resources, efficient utilization of these resources could be best attained, if prices reflect true economic cost. Several other oil producers such as, Norwich, have recognized this for some time now and generally seek to ensure that oil products are priced at their true economic cost.

What are the implications? We have made some preliminary calculations on the impact of reducing or removing the subsidy of the general level of prices in the economy. We anticipate that in the first round, the reduction or removal of the subsidy would be felt most readily in the transportation component, which accounts for about 16.7 per cent of the retail prices index. The direct impact of adjusting the level of the subsidy on petroleum products is as follows:

“If the subsidy is reduced by 25 per cent, then our preliminary calculations indicate that the transportation sub-index would increase by 3.4 per cent, while the overall index of retail prices will increase by 0.57 per cent. If the entire subsidy is eliminated, then we estimate that the transportation sub-index would increase by 13.7 per cent, while the overall index of retail prices will increase by 2.3 per cent.”

We would expect for instance, that if the subsidy were completely eliminated, the maxi taxi trip that cost \$3.00 should not increase by more than 50 cents.

Of course, adjustments to the cost of transportation will also have an indirect effect on the cost of goods and services in the other sectors. If we estimate transportation to account for about 5 per cent of the cost of goods and services, this will add a further small increase to the consumer price index.

This indirect effect does not take into account the positive impact on prices that result from a reduction in demand for petroleum products, and the likely benefits, such as increased productivity that could come from less congestion on our nation's roads and for greater economic efficiency. On the other hand, the reduction or removal of the subsidy on petroleum products is likely to free up financial resources which the Government can utilize in a more targeted way.

While the alternative uses of funds have not yet been defined, in principle, some of those resources could be deployed for improving the public transportation infrastructure, including the road network and for other social objectives which the Government may decide to pursue. The important point is to make the subsidy more targeted. We must be aware that the Government is taking steps to improve transportation services, including the expansion of the public transportation system and the enhancement of the road network.

Mr. President, in a nutshell, better pricing of petroleum products would increase transportation charges directly and can have a small impact on the general level of prices. At the same time, however, it would free up resources that can be used for more targeted expenditure. Better pricing of petroleum could also lead to efficiency gains over time arising from the easing of transportation bottlenecks.

There is one more piece of this matter that I need to place on the record and it is this. A lot of the discussion about petroleum products and prices centered around the issue of inflation and during the last three decades, Trinidad and Tobago has had mixed experiences with inflation. But what is clear is that during periods of economic boom, inflation increases and during recessionary periods, it falls. Therefore, if we are in fact going through an economic boom as indeed we are, if we look at our history between the period 1973—1982, 1983—1992, 1993—2004, we would see that as the price of oil continued to increase, the other elements of the economic cycle, one being inflation, increased as well.

The policy of this administration has been and continues to be to ensure that those who are in most need are taken care of. In fact, in the last budget if one were to look at the Social Sector Investment Programme, one would see where the Government has allocated some \$3.2 billion targeted specifically at those in our society who are in most need.

Petroleum Products
[SEN. THE HON. C. ENILL]

Tuesday, March 04, 2008

In looking at other areas of development and in looking at the cost of that development, the cost of the subsidy at this point in time, which is somewhere in the vicinity of \$2 billion, is not sustainable, and therefore, the Government must look at it and make some determination as to the best use of those resources. At this time that exercise is still continuing. The work that needs to be done so that the appropriate choices must be made has not yet been completed, and as soon as that is done, the population will in fact be advised about choices implications and action.

Thank you. [*Desk thumping*]

6.00 p.m.

Implementation of Fishing Policy (Government's Failure of)

Sen. Dr. Jennifer Kernahan: Thank you, Mr. President. The Motion on the Adjournment concerns the failure of the Government to implement the necessary policy and programmes to ensure the future of the fishing industry in Trinidad and Tobago.

Mr. President, we are a twin-island economy and fish is an important part of our diet, and access to this important source of protein at affordable prices is vital to the people of this country, so that the issue of sustainable management and protection of the fishing industry is of concern. What is the future of the fishing industry, what does it look like at this point in time? It looks very bleak and discouraging to our fisherfolk.

Our marine resources in Trinidad and Tobago can be separated into inshore coastal fishery and offshore fishery, and the failure of this administration to ensure the sustainable management of this vital resource is posing a serious challenge to the fisheries sector now and in the future. Some of the problems that are of serious concern to the industry at this present time are: the capitalization of the sector, the open access nature of the sector which has led to the over-exploitation of many species, and weak resource management, among others, and the result of these major problems is that fisherfolk have serious problems in terms of declining yields. When they go out, the catches are smaller, they have to stay longer hours to bring in smaller catches, the earnings are shrinking and, therefore, discouraging the sustainability of the sector and, of course, the net result of that is increasing prices of fish to the consumer.

Mr. President, our coastal marine environment is clearly being degraded as a result of land-based activities such as indiscriminate housing development, the destruction of wetlands and nurseries, the pollution that is being experienced because of agricultural and industrial activities and, as I said, residential activity and, therefore, we have the spectre in that context. A proposal for an island in the sea at Otaheite in the Gulf of Paria, an area which constitutes an important nursery for many of our commercial species of fish—this proposal by the Government, and it has reiterated recently that it is still on the Table and it is being pursued—is guaranteed to destroy the future of the fishing industry in the Gulf of Paria. We also have the spectre of the establishment of the Essar Steel Plant in Claxton Bay and the development of a port there which would mean the destruction of miles and miles of mangrove which constitute the hatchery of the fishing stocks in the Gulf of Paria.

Mr. President, we face in addition to that, the problems of proper management of the stock because of the absence of data monitoring mechanisms and refusal by this Government to clamp down on illegal fishing. In Trinidad and Tobago we are signatories to several international conventions: The UN Convention on the Law of the Sea, Agenda 21 and the Convention on Biodiversity of the United Nations Conference on Environment and Development. In 1995, we also signed the Convention on the Conservation and Management of Straddling Fish Stock and Highly Migratory Fish Stocks.

The signing of these conventions means that we have an obligation under these treaties not only to exploit our fish stocks, but to conserve and manage our fish resources, and that is what this administration has signed in the international arena. So when we see this Government's wilful, destructive, so-called industrialization policies which are negatively affecting the fishing industries, it is in total violation of all the conventions that we have signed internationally. So the question is, why do you sign those conventions and pay lip service to them when everything you do in terms of the industrialization, housing policy, and in terms of your attitude towards the subsector, shows that you have absolutely no concern for the sustainable management of the fishing sector?

In addition, our fisherfolk are subjected to acts of piracy in the high seas, loss of boats, engines, nets and their own lives in pursuit of the trade that they love and are dedicated to because that is what they know and what they love, and they play such an important part in this economy because they bring food, an important source of protein to the people of Trinidad and Tobago.

So, Mr. President, I would expect that the first priority of any administration which says that it cares about the astronomical rise in food prices, including fish and agricultural products, is to commit to the development of a sustainable fishing industry and this administration must commit to development of the infrastructure which the fisherfolk need; their landing sites, storage facilities, their market information and security. These are major issues that have never been resolved in spite of all the money available to the Ministry of Agriculture, Land and Marine Resources. These major issues have not been addressed and they are part of the astronomical rise in the price of food and it jeopardizes the food security of the people of this country.

This administration must commit to the protection of the fish and marine stocks and the protection of the fishermen when they go out there. There is great potential for this subsector to contribute to agricultural GDP, but they must be given the wherewithal and the help and motivation to continue to do the work they do. They are an intrepid bunch, they are enterprising, they go out all hours of the day and night, they face all the dangers of the sea and the pirates just to bring this precious commodity to the tables of the consumers of this country and they deserve the highest level of infrastructural support, incentives, security and commitment on the part of this administration to maintain the environment in such a way so that they can continue to do their jobs. But when you talk about cutting down hundreds of acres of mangrove, and the increased pollution because of the dirty industrialization that this Government is proposing with the smelters to be built in this country, you are also talking about killing the future of this important subsector, you cannot have one without the other. There is a cost to this dirty industrialization that this Government is—against all the entreaties of civil society, it is bent on destroying our food security.

Mr. President, there must be immediate implementation of a policy that would negate this open access policy; you must have a policy that is restricted, regulated and it must be enforced in order to have sustainable exploitation of the stock. The fishery subsector must embark immediately on assessment of what we have and a calculation of what is an allowable catch for each specie because there is a serious problem of over-exploitation.

People are going out there, spending longer hours and less and less fish are coming in. The question of the implementation of allowable catches and the licensing of the number of boats you are able to license to exploit these catches and the issue of a closed season is extremely important. We need to protect the fish that are spawning especially in the Gulf of Paria. The spawning of shrimp

there takes place between January and May, but trawling in the Gulf of Paria is year round, so that endangers the survival of shrimp stocks in the Gulf of Paria, that is why we are getting less catch and the prices are going up.

This administration must commit to the identification of critical habitats that are used for spawning—and a report by the University of the West Indies on the fishing resources and industry has said the entire Gulf of Paria could be considered as a spawning nursery area and research needs to be done in identifying critical fish habitats so that we know what is happening out there. But when there is a situation where there is very cavalier approach to the Gulf of Paria, anybody who wants to put down a dirty industry: a steel mill, or a smelter plant, they can just put it down, cut down all the mangroves, and it does not matter because we do not have any laws or rules that would forbid such monstrosities. People are setting up these industries here because it is virtually impossible to do that in the countries from which they come.

Mr. President, the question of zoning fishing areas into artisanal, commercial, recreational and so forth is important at the this point to avoid conflict with the different uses among the people. This Government has failed to deal adequately with all these issues, it is in fact compounding the problems that the fishermen experience at this time with the setting up of industrial plants, housing estates and so forth without the proper mitigation measures to ensure that pollution is kept at a minimal and the fishing industry is not negatively affected.

We want to say to this administration that it should not ignore the food security of this country, and the fact that fish is an important source of protein for many people who have crossed it out of their diet completely because they cannot afford it. It is extremely expensive at this time and it is so sad because we are an island economy and a lot of our people do not eat fish because they cannot afford it, and this is the result of the Government's policy with respect to the fishing subsector.

We are saying that this administration has a responsibility to the people of this country, to the present fisherfolk and to the future of the industry to look at what is happening, to take serious steps and all the corrective measures that have been pointed out by various sources and consultants. In fact, these recommendations were based on a consultancy that was done for the Ministry of Agriculture, Land and Marine Resources by the experts of the University of the West Indies and nothing has been done in terms of implementation. So you do all these studies, identify all the problems, you know what you have to do, and then you take the recommendations, pigeonhole them, shelve them and it is business as usual; we are heading straight to perdition.

Mr. President, I am asking this Government on behalf of the fisherfolk, on behalf of the people who need the sustenance and nutrition that fish provides, to change its policy and ensure that the fishing subsector is able to be exploited and survive on a sustainable basis.

I thank you.

6.15 p.m.

The Minister of Agriculture, Land and Marine Resources (Sen. The Hon. Arnold Piggott): Mr. President, I rise to respond to the Motion on the Adjournment as raised by the hon. Senator and to say to the hon. Senator, the Senate and the national population, that the Government, of which I am a part, is mindful of the fact that the fishing industry in Trinidad and Tobago plays a very important socio-economic role in Trinidad and Tobago. This is in terms of employment and income generation, foreign exchange earnings, provision of the fish protein for the people of the country, maintenance of livelihoods and sustenance, in particular to dependent, disadvantaged and vulnerable rural, coastal fishing communities.

In this regard, the Ministry of Agriculture, Land and Marine Resources, as an arm of the Government of the Republic of Trinidad and Tobago, is engaged in the fisheries management policy tailored to balance the oftentimes competing interests of fisheries conservation and the preservation of maritime environment against sectoral developments, including industrial development. It is, indeed, important to note that the fisheries sector of Trinidad and Tobago is estimated to yield an average annual catch of about 15,000 tons of fish and shellfish, valued at about TT \$120 million. It accounts for about 15 per cent of agricultural GDP which, in turn, contributes 0.3 per cent of the national GDP of the country.

In terms of employment generation, direct and indirect, it is estimated to support about 40,000 persons. Over the period 1995—2005, fish imports averaged 7,753 tons valued at TT \$60.3 million per year, while fish exports averaged 5,694 tons, valued at TT \$66.5 million. Coupled with the vital role of poverty alleviation, food security and maintenance of livelihood, the fisheries sector also makes a significant contribution to the economic development of Trinidad and Tobago. The overriding policy objectives for the fisheries sector as enunciated by the Government of the Republic of Trinidad and Tobago are as follows:

- Sustainable growth and development of the fisheries sector;
- conservation of marine fish stocks;

- preservation of fish habitats and ecological systems;
- designation of fish ports and modernization of fisheries infrastructure;
- provision of support to, and incentive programmes;
- provision of an alternative supply of fish through the promotion of aquaculture.

In terms of sustainable development, Government intends to implement a limited entry or licensing regime which the hon. Senator has called for, whereby fishermen would be required to be licensed on an annual basis. This is with a view to preventing over-fishing and decimation of the fish stocks. Government's policy would also address protection of spawning grounds through the establishment of marine-protected areas to ensure stock recruitment. The issue of open access referenced by the hon. Senator, therefore, will be addressed by this regime.

These fisheries management measures would be supported by the establishment of a fisheries advisory committee comprising all relevant stakeholders which will be responsible for the formulation of the fisheries management plans. Government recognizes its obligation under the 1982 United Nations Law of the Sea Convention to share surplus stocks where they may exist, and so would be pursuing bilateral agreements. In this regard, may I draw reference to the bilateral agreement with Barbados which was suspended in terms of its negotiations last year for a new fishing agreement.

Further, in order to inform the Government on the health of our flying fish stock off Tobago, the Food and Agricultural Organization of the United Nations has been engaged to conduct a proper fish stock assessment. In the absence, as you know, of a proper stock assessment, a precautionary approach to exploitation must be adopted. The issues of boat size, length, capacity, number of days out at sea, are all matters that the Ministry of Agriculture, Land and Marine Resources, together with the Ministry of Foreign Affairs, in discussion with the Barbadian government, put on the table.

The ministry is also in strong support of stock assessments overall on all major commercial species. For more than two decades now we have been supporting that. Species included would be: carite, king fish, shrimp—jointly with the Venezuelans—and the flying fish stocks. Trinidad and Tobago, I must say, is a contracting party to the International Commission for the Convention of Atlantic Tunas, and our country's interests are secured by annual reporting statistics on a timely basis.

Implementation of Fishing Policy
[SEN. THE HON. A. PIGGOTT]

Tuesday, March 04, 2008

In terms of conservation of the marine stocks and preservation of the fish habitats, the Government is cognizant of the multi-sectoral use of the ocean space, in particular our coastal areas, to which reference has been made by the hon. Senator. These areas are heavily impacted by a lot of developments, be they housing developments, industrial development or other.

Preservation of the livelihoods, poverty alleviation and stabilization of coastal communities are critically important to the Government in its thrust towards developed country status. I hope that Members on the other side are all committed to a developed country for Trinidad and Tobago by the year 2020. Government's policy, therefore, calls for the establishment of a Fisheries Fund with contributions from all industries that may impact the fisheries industry to address any dislocation of fishermen due to coastal development activities. In the context of coastal zone development planning, my Ministry takes a very proactive role to ensure that fisheries' concerns are given due recognition. In this regard, my Ministry is closely monitoring the proposed construction of a steel plant at Claxton Bay, earlier referenced, in light of the likely impact on the fishermen and the coastal community in Claxton Bay. We appreciate the environmental and health concerns of fishermen because of the valuable, specialized mullet fishery and nursery area off Claxton Bay and its use as a recreational area.

With respect to the water-taxi service proposed for San Fernando, my Ministry has been in touch with NIDCO and has been following up with a substantial number of discussions on the matter, of integrating the fishermen with the developments down there. In terms of the modernization of the fisheries infrastructure, my Ministry has executed a number of projects aimed at moving the sector forward. The provision of modern fishing complexes that meet international sanitary standards and promotion of quality assurance in fish and fishery products, are essential for trade promotion in the domestic and external markets. Proper marketing, therefore, including cold storage and facilities for waste disposal, would be part of the improved infrastructure.

Training programmes for our fisherfolk in fish-handling and post-harvest systems constitute yet another component of our plans. Therefore, in the area of infrastructural development, a number of projects are ongoing. If you permit me, I would outline a few of these projects: A modern fishing port at Gran Chemin, Moruga is being executed by the Rural Development Company of Trinidad and Tobago Limited. Conceptual designs for a fishing port and associated facilities, as well as other preliminary works, have already been executed through contractual arrangements. The cost of the entire onshore/offshore facility is approximately TT

\$150 million. Allocation for 2008 is TT \$20 million. In 2007, \$12 million was expended. Not only will the fisherfolk, fishermen, be facilitated in their business in terms of this Moruga development, but this port will facilitate Government's security concerns on the south coast. The issue of piracy, therefore, and loss by fishermen at sea will certainly be addressed by way of this additional facility in Moruga, apart from the other ports in Trinidad and Tobago.

In Las Cuevas, a modernized facility is also in train. A proposed designated port will be at Las Cuevas. The projected expenditure for this port, including onshore/offshore facilities, will be TT \$35 million. Designs have already been completed at a cost of \$2.5 million. TT \$4 million has already been allocated in the 2008 budget to commence construction of the facilities.

With respect to the San Fernando jetty, the ministry has signed an MOU with UDeCOTT for the construction of a jetty at San Fernando. The projected cost of the San Fernando jetty is TT \$11.4 million, which has already been allocated in the 2008 budget.

Matelot on the north-east: Designs for the reconstruction of facilities at the Matelot Fishing Centre are complete. Phase one is to be executed in 2008 at a cost of TT \$800,000. Other minor infrastructural works that are currently ongoing include roof repairs at fishing centres in Salibya, Carenage and Brickfield at a cost of TT \$500,000. In terms of an incentive, the ministry is in the process of reviewing incentives for agriculture in its entirety and fisheries would be one of the component parts that we would be looking at for incentives. In this context, Government's policy would be to phase out those incentives which are not of any significant value to the fisheries subsector.

With regard to legislation, a Fisheries Monitoring Surveillance and Enforcement Unit has been established to ensure that members of the fishing industry comply with the fisheries laws and the regulations of Trinidad and Tobago. In support of the policy initiatives, an updated draft Marine Fisheries Management Bill has been prepared and will soon be sent to Cabinet before it goes on to its process to get to the Parliament.

In terms of aquaculture and provision of alternative supplies of fish, the ministry's focus for 2008 would be to upgrade the station for research and production systems and training facilities, building institutional capacity and provision of information and support for fish farmers. Compensation of fishermen due to unusual weather conditions sometime last year or two years ago; we are in the process of identifying funds to make the payments to those fishermen.

Implementation of Fishing Policy
[SEN. THE HON. A. PIGGOTT]

Tuesday, March 04, 2008

My ministry continues to mediate in conflicts among groups of fishermen, and there are many. In the case of the long-standing feud at Alcan Bay between different factions of fishermen who utilize Alcan Bay, we shall continue to provide temporary support until the issue of the lease for the land is settled by the CDA. My Government—the Government of which I am a part—is deeply committed to food security, increased food production, contributing to reducing food prices. These are all part of the ministry's objective and commitment to the national population.

The Government of the Republic of Trinidad and Tobago, out of concern for sustainability of the fishing industry, conservation of marine resources and preservation of the fisheries habitat, will keep in focus always quantity and quality of the fishing stock within its maritime boundaries. Social, economic and environmental effects of industry on marine resources; securing the fisherfolks' livelihood; over-fishing; over-exploitation or acute depletion of marine resources will be addressed in a very timely manner. Unauthorized use of state lands or its marine assets will be given the attention which it deserves.

The Government of the Republic of Trinidad and Tobago is acutely aware that there are some who may seek to circumvent the process for regulatory approvals as they relate to land and marine asset use. The Government serves notice that it will ensure that it uses the offices of State to ensure that there is no further abuse of the land and marine resources of the Republic of Trinidad and Tobago.

I thank you. [*Desk thumping*]

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 6.29 p.m.

WRITTEN ANSWER TO QUESTION

Trinidad and Tobago Police Service (Vehicles Purchased)

32. *The following question was asked by Sen. Prof. Ramesh Deosaran:*

With respect to the responsiveness and mobility of police officers in the Trinidad and Tobago Police Service, would the hon. Minister of National Security inform this Senate:

- (i) what is the total number of vehicles, motorcycles and bicycles purchased by the Government and given to the Trinidad and Tobago Police Service for each of the years, 2002, 2003, 2004, 2005, 2006, 2007;

Written Answer to Question

Tuesday, March 04, 2008

- (ii) what is the total cost for the various items in each year of purchase;
- (iii) how many usable vehicles, motorcycles and bicycles are now available for the Trinidad and Tobago Police Service; and
- (iv) how are they distributed among the various Units, Departments and Divisions of the Trinidad and Tobago Police Service?"

The following reply was circulated to Members of the Senate:

The Minister of National Security (Sen. The Hon. Martin Joseph): Hon. Members are advised that over the last six years, 2002—2007, the Government of Trinidad and Tobago procured 665 vehicles and motorcycles for use by the Trinidad and Tobago Police Service, as follows:

	2002	2003	2004	2005	2006	2007	Total
Motorcycles	20	00	26	03	00	14	63
Vehicles	114	25	138	19	198	108	602
TOTAL	134	25	164	22	198	122	665

No bicycles were purchased for use by the Police Service.

With respect to the cost, hon. Members are advised that the sum of \$89,648,969.48 was spent on the 665 vehicles procured between 2002 and 2007, as follows:

Year	Expenditure on Vehicles (TT\$)
2002	14,109,624.00
2003	5,256,926.53
2004	27,926,721.46
2005	1,567,576.00
2006	24,119,687.74
2007	16,668,433.75
TOTAL	\$89,648,969.48

At present, there are 1,166 usable vehicles within the Trinidad and Tobago Police Service, 673 of which are currently operational, with the remaining 493 being serviced.

The current vehicle distribution within the police service is as follows:

Division/Branch	No. of Vehicles
Finance Branch	07
Administration Branch	02
Anti-Corruption Investigations Bureau	03
Audio-Visual Unit	02
CID/CRO	37
Community Police	01
Court and Process	06
Planning and Development Unit	09
E-999 Command Centre	18
Fraud Squad	04
Guard and Emergency	16
Homicide Bureau of Investigations	16
Inter Agency Task Force	27
Mounted and Canine Branch	15
Police Band	00
Police Training College	05
Service, Inspection and Complaints Unit	06
Organized Crime, Narcotics and Firearms Bureau	22
Special Branch	24
Traffic and Highway Patrol Branch	65
Transport and Telecom Branch	59
Eastern Division	30
Western Division	25
Sub-Total	399

Written Answer to Question

Tuesday, March 04, 2008

Division/Branch (cont'd)	No. of Vehicles
Sub-Total	399
Central Division	43
North Eastern Division	27
South Western Division	36
Southern Division	62
Northern Division	47
Port-of-Spain Division	29
Tobago Division	30
TOTAL	673

Hon. Members are also asked to note that during the current year, fiscal 2008, the police service will take delivery of an additional 314 new vehicles. Ninety-nine have already been received and the remaining 215 are due by July 2008. These additions will effectively increase the number of vehicles available for use by the divisions/branches and assist in alleviating the existing shortages.